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U.S. Congress. Senate.

Title:
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Place:
Washington, D.C.

Date:
1939

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Burton K. Wheeler, chairman.

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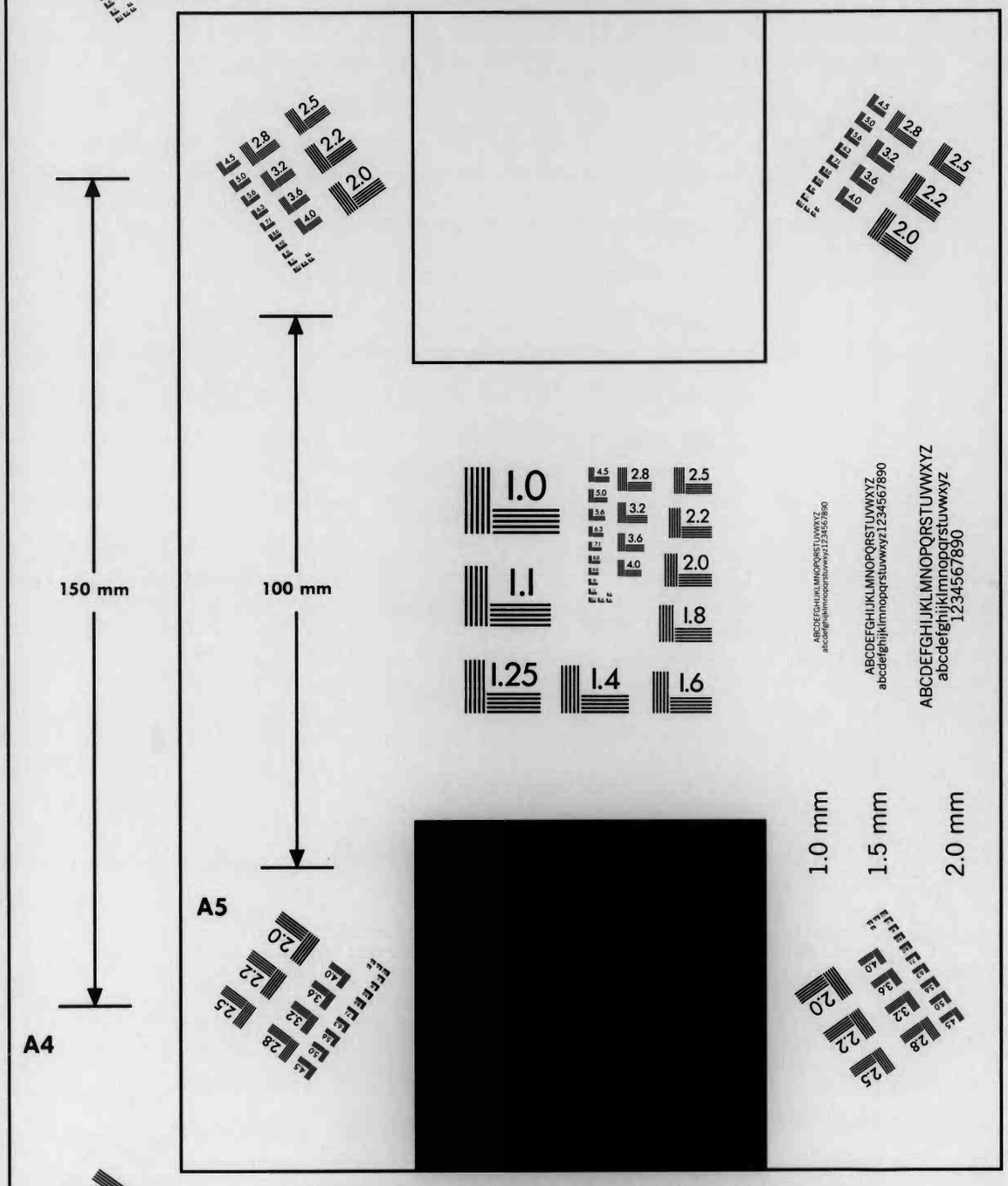


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HEARINGS--TO AMEND BANKRUPTCY ACT

U.S. Cong. Senate Comm. on Interstate Commerce

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# TO AMEND THE BANKRUPTCY ACT

## HEARINGS

BEFORE THE

## COMMITTEE ON INTERSTATE COMMERCE
## UNITED STATES SENATE

SEVENTY-SIXTH CONGRESS

FIRST SESSION

ON

## H. R. 5407

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO ESTABLISH A UNIFORM SYSTEM OF BANKRUPTCY THROUGHOUT THE UNITED STATES," APPROVED JULY 1, 1898, AND ACTS AMENDATORY THEREOF AND SUPPLEMENTARY THERETO

MAY 10, 11, AND 12, 1939

Printed for the use of the Committee on Interstate Commerce

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Bus
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39-416 May 25, 1940 H.R.

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# TO AMEND THE BANKRUPTCY ACT

**WEDNESDAY, MAY 10, 1939**

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
*Washington, D. C.*

The committee met, pursuant to call, at 10 a. m., in the Capitol, Senator Burton K. Wheeler (chairman) presiding.

Present: Senators Wheeler (chairman), Johnson of Colorado, White, Tobey, and Gurney.

The CHAIRMAN. The committee will come to order. We will consider this morning H. R. 5407, which will be made a part of the record.

(The bill under consideration, H. R. 5407, is as follows:)

76TH CONGRESS
1ST SESSION

# H. R. 5407

IN THE SENATE OF THE UNITED STATES

APRIL 18, 1939

Received from the House of Representatives by the Secretary of the Senate, under the order of the Senate of April 17, 1939, and referred to the Committee on Interstate Commerce

# AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States", as amended, is hereby further amended by adding thereto a new chapter, to be designated chapter XV, and to read as follows:

(Page 2)

"CHAPTER XV—RAILROAD ADJUSTMENTS

"ARTICLE I—JURISDICTION

"SEC. 700. In addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction, as provided in this chapter, for postponements or modifications of debt, interest, rent, and maturities or for modifications of the securities or capital structures of railroads.

"ARTICLE II—DEFINITIONS

"SEC. 705. The following terms, as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

"(1) 'Petitioner' means any carrier as defined in section 20a of the Interstate Commerce Act, including any corporation in equity receivership, petitioning for a plan of adjustment, as hereinafter defined.

"(2) 'Claims' includes debts whether liquidated or unliquidated, certificates of deposits of securities (other than stock and option warrants to subscribe to stock), including demands and obligations of whatever character made, assumed or guaranteed by the petitioner.

"(3) 'Debt' shall be considered to include all claims held or owned by 'creditors' as hereinafter defined.

"(4) 'Creditors' shall include all holders of claims, demands, and obligations of whatever character against the petitioner or its property, whether or not such claims would

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otherwise constitute provable claims in bankruptcy, including the holders of claims made, assumed, or guaranteed by the petitioner.

"(5) 'Securities' shall include those defined in section 20a of the Interstate Commerce Act, as amended, and also certificates of deposit and all other evidences of ownership of or interest in securities.

"(6) 'Commission' refers to the Interstate Commerce Commission.

"(7) 'Adjustment' shall include postponements or modifications of debt, interest, rent, and maturities and modifications of the securities or capital structures.

"SEC. 706. No creditor shall be deemed to be 'affected' by any plan unless such plan proposes a modification of the evidence of debt or other instrument defining the rights of such creditor, or a modification of the security, if any, for the claim of such creditor.

"ARTICLE III—PETITION AND POWERS OF COURT

"SEC. 710. Any railroad corporation not in process of reorganization under section 77 of the Bankruptcy Act which, before or after the effective date of this chapter, shall have—

"(1) Prepared a plan of adjustment and secured assurance satisfactory to the Commission of the acceptance of such plan from creditors holding at least 25



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per centum of the aggregate amount of the claims affected by said plan of adjustment, and

"(2) Thereafter obtained an order of the Commission, under section 20a of the Interstate Commerce Act, authorizing the issuance or modification of securities as proposed by such plan of adjustment (other than securities held by, or to be issued to, Reconstruction Finance Corporation), such order of the Commission to include also a spefic finding that such proposed issuance or modification of securities is in the public interest, is consistent with the continuance by the railroad corporation of service to the public as a common carrier, and will not impair its ability to perform such service, and

"(3) Secured assents to such plan of adjustment by creditors holding more than two-thirds of the aggregate amount of the claims affected by said plan, which two-thirds shall include at least a majority of the aggregate amount of the claims of each affected class,

may file in the United States district court in whose territorial jurisdiction such railroad corporation has had its principal executive or principal operating office during the preceding six months or a greater period thereof, its petition averring that it is unable to meet its debts, matured or about to mature, and desires to carry out the plan of adjustment.

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"If a receiver of such railroad corporation has been appointed by a court of the United States and is in office, such petition shall be filed in the court having primary jurisdiction in such receivership proceeding.

"A copy of the order obtained from the Commission, as above provided, shall be filed with the petition and made a part thereof.

"SEC. 711. Any corporation which has complied with subparagraphs (1), (2), and (3) of the first sentence of section 710, and in which corporation the majority of the capital stock having power to vote for the election of directors is owned, directly or indirectly through an intervening medium by any railroad corporation which has filed a petition hereunder, or any corporation which is a lessor of the petitioning corporation and which has complied with the aforesaid subparagraphs (1), (2), and (3) of section 710, may file its petition in the same court in which the petition first aforesaid shall have been filed, and such petitions shall be heard and disposed of in a single proceeding.

"SEC. 712. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other sections of this Act, or any other Act.

"SEC. 713. Immediately following the filing of the petition, there shall be convened a special court of three judges

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in the manner provided by section 266, as amended, of the Judicial Code, and thereafter all proceedings relative to such plan or any modification thereof shall be conducted before such court. Such three-judge court shall be vested with and shall exercise all the powers of a district court sitting in equity and all the powers as a court of bankruptcy necessary to carry out the intent and provisions of this chapter, including the classification of claims at such time and in such manner as the court may direct.

"SEC. 714. The special court, after hearing, promptly shall enter an order approving the petition as properly filed under this section if satisfied that such petition complies with this section and has been filed in good faith, or dismissing such petition if not so satisfied.

"SEC. 715. If the petition is approved by the special court, the said court, during the pendency of the proceedings under this chapter, shall have exclusive jurisdiction of the petitioner and of its property wherever located to the extent which may be necessary to protect the same against any action which might be inconsistent with said plan of adjustment or might interfere with the effective execution of said plan if approved by the court, or otherwise inconsistent with or contrary to the purposes and provisions of this chapter: *Provided, however,* That nothing herein contained shall be construed to authorize the court to appoint any trustee or

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receiver for said properties or any part thereof, or otherwise take possession of such properties or control the operation or administration thereof.

"ARTICLE IV—HEARINGS

"SEC. 720. The special court shall fix a date for a hearing to be held promptly after the filing of the petition and notice of such hearing or hearings shall be given to all creditors affected by the plan in such manner as the court shall direct. In such proceeding, the court may allow such interventions of parties in interest as it may deem just and proper, but any holder of securities of the petitioner shall have the right to present evidence and be heard thereon, in person or by attorney, with or without intervention.

"SEC. 721. After such hearing, the special court may approve the plan as filed or modify such plan and approve the same as so modified. If the court shall modify the plan in a manner which the court shall find substantially or adversely affects the interests of any class or classes of creditors, such plan shall be resubmitted, in such manner as the court may direct, to those creditors affected by such modification and shall not be finally approved until after reasonable time, fixed by the court, is allowed for said creditors to be heard thereon.

"SEC. 722. If the United States, or any agency thereof, or any corporation (other than the Reconstruction Finance



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Corporation) the majority of the stock of which is owned by the United States, is a creditor or stockholder, the Secretary of the Treasury is hereby authorized to act in respect of the interests or claims of the United States or of such agency or other corporation. If in any proceeding under this chapter the United States is a creditor on claims for taxes or customs duties (whether or not the United States has any other interest in or claim against the debtor as creditor or stockholder), no plan shall be approved by the court if it provides for the payment of less than the full amount of such claim or provides for any postponement of such payment unless the Secretary of the Treasury shall certify to the court his willingness to accept a lesser amount or agrees to such postponement.

"ARTICLE V—PROCEEDINGS SUBSEQUENT TO APPROVAL OF PETITION

"SEC. 725. If the special court shall be satisfied—

"(1) That, at the time of the filing of said petition as provided in article III hereof, the proposed plan of adjustment had been assented to by not less than two-thirds of the aggregate amount of all claims of the petitioner affected by such plan, including at least a majority of the aggregate amount of claims of each such class;

"(2) That the plan of adjustment as submitted or as modified by the court has been accepted as submitted

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or as modified by or on behalf of creditors affected by such plant holding more than three-fourths of the aggregate amount of the claims affected by said plan, including at least three-fifths of the aggregate amount of the claims of each affected class;

"(3) That the plan is fair and equitable, is in the public interest, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; and

"(4) That all corporate action required to authorize the issuance or modification of securities pursuant to such plan shall have been duly taken;

Said court shall file an opinion setting forth its conclusions and the reasons therefor and shall enter a decree approving and confirming such plan and the adjustment provided thereby, which decree shall be binding upon the petitioner and upon all creditors and security holders of the petitioner; and thereafter the petitioner shall have full power and authority to and shall put into effect and carry out the plan and the orders of the special court relative thereto and issue the securities provided by the plan without further reference to or authority from the Commission or any other

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authority, State or Federal, and the rights of all creditors and security holders with respect to claims and securities affected by the plan shall be those provided by the plan as so approved and confirmed: *Provided, however,* That the title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the petitioner, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this chapter.

"The plan of adjustment may contain appropriate provisions whereby the interests of creditors affected by the plan shall be safeguarded in all matters of the petitioner's financial policy and operations.

"SEC. 726. After the special court shall have approved as properly filed a petition pursuant to article III hereof, the special court, from time to time during the pendency of the proceedings hereunder, may enjoin the institution of, or stay, any action or proceeding to enforce any right against the petitioner or its property based upon claims affected by the proposed plan of adjustment in any court, State or Federal, whether for the enforcement of any such claim or for the appointment of receivers in equity or of the institution or prosecution of a proceeding under section 77 of the Bank-

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ruptcy Act or otherwise: *Provided, however,* That no such stay shall affect any proceeding to enforce any claim which would be required to be paid if the plan of adjustment proposed by the petitioner were then in effect.

"SEC. 727. Unless the plan of adjustment as submitted or as modified shall have been confirmed by the special court within one year from the date of filing the petition, the proceedings shall be dismissed unless, for good cause shown, on motion of any party in interest the court shall determine otherwise.

"SEC. 728. Without prejudice to existing rights of all creditors, including those affected by the plan, and as a condition to the approval of any plan by the special court, the petitioner, from and after the filing of the petition with the court and until the making of a final order by the special court approving a plan or dismissing the petition, shall continue to make or tender payment to all creditors affected by the plan of sums currently payable to such creditors equal to the amounts proposed to be paid to such creditors under the plan. If, from and after the filing of the petition with the special court, there shall be any failure to make or tender such payments, the special court, unless there is good cause shown for the failure, shall dismiss the proceedings. In finally approving any plan, the court may make or require



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to be made such adjustments with respect to said payments or any of them as may be necessary to make the same conform to the provisions of said plan as finally approved.

"SEC. 729. In providing for any such payments the petitioner may require any bond or other security, including interest coupons affected by such payments to be presented to or deposited with a paying agent or depositary named by the petitioner for appropriate stamping to show the amounts and circumstances of such payment.

"ARTICLE VI—TAX PROVISIONS

"SEC. 735. The provisions of Sections 1801, 1802, 3481, and 3482 of the Internal Revenue Code and any amendments thereto, unless specifically providing to the contrary shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any plan of adjustment confirmed under the provisions of this chapter. No income, gain, or profit taxable under any law of the United States or of any State, now in force or hereafter enacted, shall in respect to the adjustment of the indebtedness of any petitioner in a proceeding under this chapter be deemed to have accrued to or to have been realized by such petitioner by reason of a modification of or cancelation in whole or in part of any of the indebtedness of the petitioner affected by a proceeding under this chapter.

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"SEC. 736. In addition to the notices elsewhere expressly provided, the clerk of the court in which any proceedings under this chapter are pending shall forthwith transmit to the Secretary of the Treasury copies of—

"(1) Every petition filed under this chapter;

"(2) The orders approving or dismissing petitions;

"(3) The orders approving plans as filed or as modified, together with copies of such plans as approved;

"(4) The decrees approving and confirming plans and the adjustments provided thereby, together with copies of such plans as approved;

"(5) The injunctions or other orders made under section 726 of this chapter;

"(6) The orders dismissing proceedings under this chapter; and

"(7) Such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct to be transmitted to him.

"SEC. 737. Any order fixing the time for confirming a plan which affects claims or stock of the United States shall include a notice of not less than thirty days to the Secretary of the Treasury.

"ARTICLE VII—INTERSTATE COMMERCE COMMISSION

"SEC. 740. If, in any application filed with the Commission pursuant to section 20a of the Interstate Commerce

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Act for authority to issue or modify securities, the applicant shall allege that the purpose in making such application is to enable it to file a petition under the provisions of this chapter, the Commission shall take final action on such application as promptly as possible, and in any event within one hundred and twenty days after the filing of such application.

"ARTICLE VIII—FINAL DECREE AND REVIEW

"SEC. 745. Any final order or decree of the special court may be reviewed by the Supreme Court of the United States upon application for certiorari made within thirty days after the entry of such order or decree, pursuant to the provisions of the Federal Judicial Code.

"SEC. 746. In the decree approving and confirming the plan the court may require such reports of the action taken by the petitioner thereunder in the execution of the plan as may be necessary to a final disposition of the cause, and in its final decree disposing of the cause the court shall retain jurisdiction in the district court to the extent necessary to protect and enforce the rights of the parties under said plan and the orders of the Court thereon.

"ARTICLE IX—SAVING CLAUSE

"Sec. 750. If any provision of this chapter, or the application thereof to any railroad corporation or circumstances, is held invalid, the remainder of this chapter, or

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application of such provisions to other railroad corporations or circumstances, shall not be affected thereby.

"ARTICLE X—TERMINATION OF JURISDICTION

SEC. 755. The jurisdiction conferred upon any court by this chapter shall not be exercised by such court after five years from the effective date of this chapter, except in respect of any proceeding initiated by filing a petition under section 710 hereof on or before the termination of such five-year period."

Passed the House of Representatives April 17, 1939.

Attest: SOUTH TRIMBLE, *Clerk.*



The CHAIRMAN. We will hear Mr. Fletcher.

## STATEMENT OF R. V. FLETCHER, GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS, TRANSPORTATION BUILDING, WASHINGTON, D. C.

The CHAIRMAN. You might state your name and position for the benefit of the record.

Mr. FLETCHER. My name is R. V. Fletcher. I am a lawyer. I live in Washington. I am counsel for the Association of American Railroads.

I appear here today in advocacy of the bill now being considered by the committee, H. R. 5407, a bill which passed the House of Representatives recently without a dissenting vote.

The CHAIRMAN. Was there a roll call on the bill?

Mr. FLETCHER. There was no roll call on it.

The CHAIRMAN. Perhaps that is the reason why there was no dissenting vote.

Mr. FLETCHER. I would not be sure about that. There was no demand for a roll call as I recall it. The bill was taken up in the House by unanimous consent; that is, there was no objection to its consideration, and it was not necessary to suspend the rules, and no opposition developed in the House.

The CHAIRMAN. They are a good deal easier over there than we are.

Mr. FLETCHER. I do not know about that. There was some discussion on the bill, but only by those who appeared in advocacy of it. I had the privilege, Mr. Chairman, of making a brief statement about this bill at the hearings before the House Committee on the Judiciary, and those hearings have been printed. If they could be of any value to this committee I am sure copies could be secured.

The Association of American Railroads, as I have frequently stated to this committee, is a voluntary association composed of practically all class I railroads of the country. They have by formal resolution directed men to advocate the passage of this bill if an opoprtunity was afforded to do so.

I have frequently stated in hearings before this committee that not only did I appear in a general way in advocacy of bills approved by the Association of American Railroads, but also in advocacy of measures which have been recommended by the so-called Committee of Six, being that committee which was appointed by the President of the United States to study the transportation question and make recommendations to the President as to what measures seemed to be desirable to improve the situation of the railroads.

I find in the report of the Committee of Six, on page 28, a brief reference to the subject of voluntary reorganizations, and this bill falls in that category. With your permission, Mr. Chairman, I should like to ask the committee reporter to copy what is stated in the report of the Committee of Six on that subject.

The CHAIRMAN. That may be made a part of our record.

Mr. FLETCHER. I furnish it to the committee reporter for that purpose:

REORGANIZATION PROCEDURE

There is general dissatisfaction with the way in which the procedure provided in section 77 of the Bankruptcy Act has worked out in practice. The feature of the present procedure that is apparently responsible for this dissatisfaction is the duality of the jurisdiction which it sets up for dealing with plans of reorganization, with its requirements for the approval of such plans by both the Interstate Commerce Commission and the district courts but with power lodged in nether tribunal to effectuate its own conclusions in the event of lack of unanimity.

The primary responsibility for and jurisdiction over reorganizations is committed to the Interstate Commerce Commission, even in respect of the allocation and distribution of new securities, a process which involves the determination of legal and equitable rights often involving problems of the utmost legal complexity which it would seem that the courts are clearly better equipped to deal with than is a regulatory commission. When, after hearings that are usually quite extensive the Commission has finally succeeded in formulating a plan, it is given no authority to put it into effect but must refer it back to the court in which the bankruptcy proceeding is pending. If the court, after further extensive hearings thereon, finds it possible to approve the plan as referred to it by the Commission, it must be again referred to the latter for submission to all creditors and stockholders affected thereby in an effort to secure the necessary assents. After the Commission has performed that task, it is required to refer the results back to the court for entry of the decrees necessary to bind nonassenting creditors and stockholders.

In the event the court finds itself unable to adopt the plan as submitted by the Commission, it has no alternative but to dismiss the bankruptcy proceedings, leaving the debtor to its own devices, or refer the plan back to the Commission with its recommendations to see if that body is willing to modify its original conclusions. This may involve further shuttling of the matter back and forth between the court and the Commission.

It seems clear that this unwieldly procedure both can, and should be, simplified, and that the first step toward the accomplishment of that result should be to restore full control over all phases of reorganization to the courts, where we think that it properly belongs. Recognizing, however, the desirability of insuring so far as possible the handling of such a highly important and exceedingly difficult matter in each instance by a court which is especially fitted therefor by training and experience, we are not suggesting that this control be vested in the Federal district courts.

We recommend that the Commission be relieved of all responsibility in connection with railroad reorganizations either in ordinary equity receivership proceedings or in proceedings under section 77 of the Bankruptcy Act.

We further recommend the establishment of a single court, to be located at Washington or some more central point if deemed desirable, and to be vested with all the jurisdiction now exercised by both the Federal district courts and the Commission over all matters connected with the reorganization of railroads involved in proceedings under section 77 of the Bankruptcy Act, or in equity receivership proceedings, appeals therefrom to be directly to the Supreme Court.

The judges of the court (not less than three, but preferably five) should have the status of Federal circuit judges and should have the same qualifications and be appointed in the same way as Federal circuit judges. They should be selected with especial reference to their experience in and qualifications for the highly specialized work to which the court is to be devoted. They could probably be made subject, when not occupied with cases in their own court, to assignment to assist in the work of the district courts or the circuit court of appeals in any circuit.

Our recommendation would leave in the district courts all jurisdiction now exercised by them in proceedings under section 77 of the Bankruptcy Act and in railroad equity receivership proceedings, except those which relate to the reorganization of the debtor companies. We would provide that any petition in bankruptcy or receivership should be filed in the appropriate district court as now, but that a copy of the petition should be concurrently filed in the reorganization court, with the jurisdiction of the latter attaching as soon as the petition is allowed in the district court. From the time of the attachment of its jurisdiction, the new court should have full and exclusive jurisdiction over all matters relating to reorganizations, without the necessity of the approval of any of its actions by the



Interstate Commerce Commission, but with the right to call upon it or any other governmental body for information or assistance. The district court should continue to function as it does now with respect to all other matters connected with the bankruptcy or receivership proceedings.

We also think it would be in the interest both of economy and efficiency in the administration of the affairs of a railroad in bankruptcy if the present provision of section 77, which makes mandatory the appointment of at least one trustee, and of an additional one in the event anyone connected with the debtor is selected, were eliminated and the court were left free to exercise its own discretion in the matter as is provided under section 77B with respect to other corporations.

The aim of any reorganization should be to provide a capital structure which is reasonably calculated to safeguard against future insolvency and the necessity of further reorganization. Reorganizations of the past have all too frequently failed in that aim. The reason for this in our judgment is that too much emphasis has been placed heretofore on the total funded debt of the reorganized company and its relation to the physical value of the property, and too little emphasis upon the resulting fixed charges and the future earning capacity of the property in bad times as well as good.

We accordingly recommend appropriate statutory provision to the effect that no reorganization plan shall be approved by the court unless the fixed charges for which it provides are in an amount which is within the ability of the property to earn at all times, as demonstrated by its past experience.

I call attention to the fact that the Committee of Six expressed some doubt as to the constitutional validity of legislation along this line:

VOLUNTARY REORGANIZATION

There seems to be a rather general feeling among those concerned over the present financial condition of the railroads that the Bankruptcy Act will remain unsatisfactory and inadequate so long as it fails to provide some means by which—

(1) A financially embarrassed railroad which is able to arrange a composition with a large majority of its creditors and stockholders may be able to effect a reorganization on the basis of the composition agreement without the formality of procedure as now required by section 77, thus avoiding most of the delay, expense, and sacrifice of efficiency and prestige which seem to be necessary incidents of such procedure; or

(2) A railroad faced with presently maturing obligations which it will be unable to meet may, without formal petition in bankruptcy, secure a temporary moratorium thereon, where there are reasonable grounds for the belief that it will thereby be enabled to work out of its difficulties and meet all obligations in full.

Doubt has been expressed as to the constitutional validity of any legislation seeking to set up procedure of the sort necessary to accomplish the results sought. For that reason we make no recommendation with respect to the matter, although we have no doubts as to the desirability of such legislation if it can properly be provided.

The CHAIRMAN. I want to say to you Mr. Fletcher, I am sorry we have not more members of the committee present. We notified all members last night, and telephoned to their offices again this morning. It has been impossible to get more present.

Mr. FLETCHER. I understand. There was some doubt, as I say, as expressed by the Committee of Six, as to the constitutional validity of this legislation, and that leads me to say a word or two upon that subject.

The CHAIRMAN. What part is that of the report of the Committee of Six? It is really a moratorium for the railroads during a given period of time, is it not?

Mr. FLETCHER. Well, I do not think so, Mr. Chairman. I hardly think the word "moratorium" is comprehensive enough to cover all the purposes of this bill. One thing that might be accomplished would be a moratorium, but it might go beyond that as I will endeavor to explain in just a moment.

The CHAIRMAN. Very well. You may proceed.

Mr. FLETCHER. Now, coming to this bill, which is aptly termed I think a voluntary adjustment bill, and which is in the nature of a measure to enable railroads, if they can agree with three-fourths of their creditors, to bring about a composition with those creditors, and my function here is not so much to give resons why the bill should be enacted into law but rather to analyze those provisions briefly so that this committee may understand just what is meant to be accomplished by the bill and how it could be accomplished in event the bill becomes law.

The bill rests primarily so far as jurisdiction is concerned upon the bankruptcy power, which is vested in the courts by the Constitution of the United States. No methods, whereby the ends sought by this bill could be accomplished, have occurred to any of us other than through the exercise of the bankruptcy power. It is therefore aptly denominated as an amendment to the bankruptcy law, and it takes the form of a new chapter, which would be known as chapter 15 of the bankruptcy law.

It was intended to cover situations where it was not in the public interest to require a railroad to go through the painful and expensive process of bankruptcy in the full sense of the word. It would have, of course, limited application because it could not function except in cases where stockholders, who propose a plan, are able to agree with three-fourths of their creditors as to some modification of the debt, interest, and rent obligations of a carrier, or to some postponement of time of payment of those obligations.

Section 700 of the House bill is the clause which deals with the jurisdictional aspects of the bill. It there provides it may take the form of postponement of debt, interest, and rent obligations; it may take the form of modifying obligations of a railroad as expressed in their contracts with their creditors; or it may take the form of a modification of the capital structure of a railroad.

I want to make clear at the outset of the case that I have heard some criticism of the bill. For instance, along the line that this bill would permit the modification not only of the debt structure of railroads, but it would also permit a modification of the rights of stockholders as well, providing an agreement could be entered into between stockholders who propose a plan and security owners who are required to endorse the plan, with such change in the capital structure as contemplated any modification of the rights of stockholders thought desirable. You see, the whole thing rests upon the type of plan which is agreed to by creditors and which has found the approval of the Interstate Commerce Commission and of the court.

Now, Mr. Chairman, this is not an easy thing to accomplish, as I think you can readily understand when you remember that ultimately no plan can be approved which has not been endorsed by three-fourths of the creditors affected by the plan, I mean taken as a whole, and which is not also endorsed by 60 percent of all members of each class of creditors. I think it would apply more particularly to that class of railroads which are on the border line or perhaps coming near to the border line.

We have been accustomed to think of railroads as being divided into three classes: Those that are in such great difficulties that they have progressed so far toward insolvency that full reorganization is necessary under the processes of the bankruptcy law; and another



class which are fairly solvent and seem to be getting along pretty well; and a third class which might be called border-line cases, where there is a reasonable probability of being able to survive and avoid bankruptcy if they are given some concessions in the matter of meeting their obligations.

It is toward that third class that this particular bill is directed, and instances have arisen and will be told to this committee by other witnesses, where railroads find that if they could get some time on their obligations, if there could be a renewal of a note so to speak rather than a demand for immediate payment, or if there could be some reduction in the amount of interest they are required to pay, provided this country comes back at all and business conditions improve, as we are all hopeful they will, they would be able to survive without having to go through bankruptcy in the full sense of the word. It is toward that class of railroads that this matter is directed, and I want to say that I am prepared to suggest that after the word "securities" where it appears in the seventh line, section 700, page 2 of the bill, it might be well, in the interest of making clear that leases are involved, to insert the word "leases" after the word "securities."

The CHAIRMAN. On what page?

Mr. FLETCHER. Page 2 of the bill, line 7.

The CHAIRMAN. All right

Mr. FLETCHER. Now, on this subject of leases, which will be treated by another witness who is a little better informed on the subject than I am, I can say this in a general way: That there are railroads now that have in the past leased other railroad properties, and provisions are found in the lease contract under with the lessee pays for the use of the property of the lessor rents which are often predicated upon an amount of money which would be needed to pay interest on outstanding bonds, and in some cases those leases take the form of requiring payments of money sufficient to pay dividends upon a certain amount of capital stock.

I could cite cases which have come under my observation where lease contracts of that kind have been made and where the rental is measured by the total amount necessary to pay interest on outstanding bonds, and also the amount necessary to pay dividends on outstanding stock. Now, it may be desirable, if this bill becomes law, to modify some of those leases in some respects, because certain of those leases have proven to be quite burdensome and for that reason I suggest the insertion of the word "leases" after the word "securities" in the seventh line of page 2 of the bill.

I stated a moment ago that I would like to make some reference to cases which make it clear to my mind at least that there is no difficulty on constitutional grounds so far as this bill is concerned. I would like to refer to them without reading the cases, if I may.

The CHAIRMAN. Let me ask you this question right there: When the question of constitutionality is raised on what theory is it raised?

Mr. FLETCHER. On the ground that this bill did not sufficiently protect the interests of minorities, of less than 25 percent, which had not consented to the plan. I do not think it has been urged with much furiousness but I have heard some suggestions that this bill undertakes to sacrifice the interests of those who do not see proper to consent to a plan. I hope to show, if my time will permit, that

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there is no question at all involved in this bill which would lead to that conclusion, and that if the interests of those who do not agree to a plan is the point, they are proetcted just as fully as they would be if there were a full proceeding under section 77; because in any bankruptcy proceeding I know anything about there will never be a case where some interest may not have to be sacrificed, at least that they will have to take some medicine they do not find very palatable—and that would be true in a bankruptcy proceeding whether involving a railroad or some other property; and where a court has approved a composition with the creditors this is a position they will have to meet.

The CHAIRMAN. My understanding is that over in the House, Representative Chandler made a statement that in event this legislation is enacted into law those railroads which are now in bankruptcy or receivership could be taken out of bankruptcy or receivership and could be reorganized under this bill. What have you to say about that?

Mr. FLETCHER. This bill expressly provides that railroads under section 77 now in bankruptcy shall not have the right to avail themselves of the provisions of this bill.

The CHAIRMAN. How is that?

Mr. FLETCHER. I say, this bill expressly provides that railroads under section 77 now in bankruptcy shall not have the right to avail themselves of the provisions of this bill.

The CHAIRMAN. Let me call your attention to this language.

Mr. LEWIS of Colorado. I can see the difficulty. Nevertheless, the procedure proposed under the pending bill has been received in general with great approval. The difficulty is that you might dismiss the proceeding under section 77 without any assurance that you could work out a composition plan under the provisions of the pending bill.

Mr. CHANDLER. But the beginning of a proceeding under this bill is entirely out of court. If the security holders desire at any time to prepare a plan with the assistance of the railroad itself they can do so, and if they get the requisite number of security holders to assent to such a proceeding, they should be able to dismiss the section 77 case, and complete the reorganization under the new statute. However, they cannot carry through this proceeding with a section 77 proceeding still pending.

Mr. LEWIS of Colorado. It would be possible, however, to initiate such a proceeding under the pending bill even though the proceedings under section 77 were still pending?

Mr. CHANDLER. Yes; it is possible to initiate such a proceeding, because it is initiated out of court.

Mr. FLETCHER. That is what I want. I wanted to make clear——

The CHAIRMAN (interposing). But your idea is that they could dismiss the pending proceeding.

Mr. FLETCHER. Like what would be involved there; yes. I suppose I would have to answer that question in the affirmative. But in order that a railroad now under section 77 could avail itself of the provisions of this bill, it would be necessary to get the consent of 75 percent of their creditors as a whole, and 60 percent of all creditors in each class. And having done that they have to convince the court that all the interests involved would be best subserved by having the section 77 proceeding dismissed. And you would hardly conceive of a court taking that action unless he thought it was in the public interest.

The CHAIRMAN. Well, I can conceive of some courts doing a lot of things that have not been in the public interest.



Senator WHITE. Does it take 75 percent in one instance and 66⅔ percent in another instance for a proceeding under section 77B to be dismissed?

Mr. FLETCHER. No, sir. This refers to a proceeding under section 77 and not section 77B. Such a proceeding would be dismissed by the court if the court reached the conclusion that there was no use trying to go on with it and there was no possibility of getting a decree which would meet the situation.

Senator WHITE. What was your reference to 75 percent and to 66⅔ percent?

Mr. FLETCHER. In the case of this bill there could be no decree finally approving a plan unless 75 percent of the creditors as a whole—and when I say "as a whole" I mean measured by the value of their claims—consent to it; and unless 60 percent, included within the 75 percent, of each class as the court has classified the claims, consent to it.

The CHAIRMAN. Let us assume that a railroad has a minority stockholder or creditor, and the major or 75 percent of creditors are institutional organizations, and they get together, even though the railroad did not need reorganization, but they wanted to squeeze out that man holding a small minority interest, they could fail to pay interest or postpone payment under this bill, could they not, and bring such a situation about?

Mr. FLETCHER. No, sir. They cannot do that unless there is an allegation that the railroad is unable to meet its obligations. It must be in the status where a bankruptcy court would take charge of it before they could proceed in that way.

The CHAIRMAN. Mr. Chandler said, on page 6060 of the Congressional Record:

Mr. LEWIS of Colorado. By my interrogatories of the gentleman I did not wish in any way to criticize but to praise this bill. However, some question has been raised by those interested and who have found so much merit in the pending bill that they are wondering if they might not avail themselves of its provisions, even though they are already, as they express it, "enmeshed in 77."

Mr. CHANDLER. I think it may be possible and quite probable that many railroads now in court in one way or another may be able to work out their problems and then seek relief under this bill if enacted into law. I have the feeling that this bill's usefulness will expand with experience under it.

Mr. FLETCHER. Yes; I think that is sound. I believe they could. And, furthermore——

The CHAIRMAN (interposing). Then you think it would be the right thing to let railroads that are now in bankruptcy go ahead and dismiss their petitions in bankruptcy and come outside and try to work it out in this particular way?

Mr. FLETCHER. I do not think that would ever happen. In the first place, those proceedings have gone on so far, or at least many of them have, that they are very close now to a point where some final plan will probably be approved either by the Commission or the court, or both. They have to get the consent of all these creditors, and so many controversies have already arisen I do not think it would be practical to secure anything like the majority required under this bill.

The CHAIRMAN. As far as I am concerned I would never in a million years agree to a bill providing that railroads now in bankruptcy could have their proceedings dismissed and come out and be allowed to go ahead in the manner provided here.

Mr. FLETCHER. This bill provides that any railroad in bankruptcy now shall not have the privilege of using this bill. That is very clear as I will explain later. Aside from that I fail to see how any minority stockholder could be any worse off under this bill than under the full bankruptcy law.

The CHAIRMAN. While he might not be any worse off, yet he might not be as well off.

Mr. FLETCHER. Under section 77, in the first place, you are expected to get 66⅔ percent rather than 75 percent of the creditors to agree upon a plan, but if you do not get the consent of 66⅔ percent the court also may force a plan against the will of the security owners.

The CHAIRMAN. You are familiar with the case of the Baltimore & Ohio. Have they not worked out their plan at the present time?

Mr. FLETCHER. I think so.

The CHAIRMAN. What percentage——

Mr. FLETCHER (interposing). May I ask for an answer by someone representing the Baltimore & Ohio?

Mr. ANDERSON. It is 85 percent, I believe.

Mr. FLETCHER. The misconception about this bill arises out of the fact that the idea prevails in certain quarters that this bill would prevent a proper and wholesome reorganization of a carrier, but I think that is not true at all. In the case of this bill, as you will see as I proceed with my analysis of it, a court has to find that the plan which has been agreed upon is in the public interest. They have to find that all standards laid down by the law and the courts as being essential to a sound railroad structure, have been met here in this case. It has to conform to the established rule as to what constitutes priorities in the *Boyd case* and other cases of that kind. So that there is no failure here to consider public interest or rights of minorities. The essential thing about this bill is that it enables railroads to agree with their creditors and with their stockholders upon a sound plan under which they can live and proceed, without the sacrifice of the interests of anybody. The only people hurt by this bill are the gentlemen who have been so much interested in serving on protective committees and as counsel for protective committees. Now, they do have some ground I suppose to complain.

The CHAIRMAN. You would not say they would be the only people hurt by this legislation, would you? Whatever you may want to call it, Mr. Eastman refers to it himself in his letter to this committee:

> It appears that it is the intent of the bill to sanction virtual moratoriums for railroad companies which are unable to meet their debts, or in other words to permit payments of interest or principal to be postponed for a time without in any way extinguishing or modifying the right to ultimate collection. Such a plan can be justified only on the theory that the railroad company is passing through a temporary period of low earnings which will be succeeded, at no very distant date, by a return to high or comparatively high earnings, for unless this happens nothing will be accomplished except to defer the evil day and make it worse when it finally arrives. We note that the House Committee on the Judiciary states in a report accompanying H. R. 5407 that the bill, if enacted, is intended primarily to apply to railroad companies in temporary financial difficulties and requiring temporary relief, but not so involved as to require thorough overhauling of their capital structures.
>
> As to some railroads, there is certainly as much reason to guess that there will not be as that there will be a return to high or comparatively high earnings. If there is no such return, the ultimate state of the creditors of a railroad, after such a moratorium as H. R. 5407 contemplates, will not be better but on the contrary will be worse. Such a result is all the more to be feared, because of the fact that the management of the company, in its endeavor to prevent a breakdown of the plan, may be expected to neglect the proper upkeep and improvement of the property. There has, in our judgment, been a tendency to temporize with the situation of railroads that cannot reasonably be expected to meet their charges without an actual reduction, and this bill appears to contain possibilities of a continuance of that policy.



So really it is not a question of just creditors. There is a public interest involved in whether or not railroad companies are going to continue to cling on by an eyelash because it does have the tendency to depress and cut down and deepen the depression. Now, that is the principal point as far as I am concerned that bothers me about this proposed legislation.

Mr. FLETCHER. I hope the committee will not take everything that Mr. Eastman says as being exactly right, because I am sure the committee will want to examine this bill for itself.

The CHAIRMAN. Oh, yes, the members of the committee will do that.

Mr. FLETCHER. I think Mr. Eastman, while he always makes an intelligent and I dare say an honest discussion of these matters, falls into the same error that some others have fallen into, namely, that it is not a complete reorganization but is complicated, dependent upon what stockholders and creditors might agree upon. Before a court could approve a plan, it must be proven to be compatible with the public interest.

Let us suppose you had a section 77 proceeding, with all its delay, such as we have heard so much talked about, with all its expense, and during the progress of the proceeding creditors and stockholders were able to get together, 75 percent of them, on a plan, don't you think it very likely that the Interstate Commerce Commission and the court would go very carefully into the matter, but would give due consideration to that plan since it was endorsed by so large a number of those primarily interested, and that they would probably approve that plan, just as this court is called upon to approve a plan in connection with the bill now under consideration?

The CHAIRMAN. They would give serious consideration to it, yes, but, after all, if it was not in the public interest they should not do it.

Mr. FLETCHER. No, and a court won't do it under this bill.

The CHAIRMAN. A court nor the Commission should not give consideration to it unless found in the public interest.

Mr. FLETCHER. That is quite right.

The CHAIRMAN. And certainly if they realize the plan is only prolonging the evil day.

Mr. FLETCHER. Yes. And under this plan a court will not approve it unless it is in the public interest.

Senator WHITE. Mr. Chairman, did this bill come before the Judiciary Committee of the House?

The CHAIRMAN. Yes.

Mr. FLETCHER. I want to call to your attention but not read excerpts from the cases; or at least I would like to put in a reference from a leading case, which is *Continental Bank* v. *Rock Island Railway*, appearing in Official Reports of the Supreme Court as volume 294 U. S. No. 4, beginning at page 648. I call particular attention to what is said by the Court on pages 672 and 673:

> Equity receiverships, resorted to for that purpose, have never been satisfactory, for many reasons. Partly, no doubt, in recognition of that situation, Congress by section 77, added railroad corporations to the category of those who

might have relief by legislation passed in virtue of the bankruptcy clause of the Constitution; and determined, after consideration, that such relief to be effectual should take the form of a reorganization, and should extend to cases where the corporation is "unable to meet its debts as they mature." The last phrase, since it is used as an alternative for the word "insolvent," obviously means something less than a condition of "bankruptcy" or "insolvency" as those words are employed in the law. See Bankruptcy Act, section 1 (15), which defines an "insolvent" as one whose assets, at a fair valuation, are not sufficient to pay his debts. It may be construed to include a debtor who, although unable to pay promptly, may be able to pay if time to do so be sufficiently extended. Obviously, section 77 does no more than follow the line of historical and progressive development projected by previous acts.

As outlined by that section, a plan of reorganization, when confirmed, cannot be distinguished in principle from the composition with creditors authorized by the act of 1867, as amended by the act of 1874. It is not necessary to the validity of either that the proceeding should result in an adjudication of bankruptcy. The constitutionality of the old provision for a composition is not open to doubt. *In re Reiman* (20 Fed. Cas. 490, 496–497), cited with approval in *Hanover National Bank* v. *Moyses, supra.* That provision was there sustained upon the broad ground that the "subject of bankruptcies" was nothing less than "the subject of the relations between an insolvent or nonpaying or fraudulent debtor, and his creditors, extending to his and their relief." That it was not necessary for the proceedings to be carried through in bankruptcy was held not to warrant the objection that the provision did not constitute a law on the subject of bankruptcies. The same view sustains the validity of section 77. Both contemplate an adjustment of a failing debtor's obligations; and although actual bankruptcy may not supervene in either, they are none the less laws on the subject of bankruptcies. With due regard for consistency, the constitutional validity of the one cannot well be sustained and that of the other denied, as this court quite evidently recognized in *Canada Southern Ry. Co.* v. *Gebhard* (109 U. S. 527).

That case involved an act of the Canadian Parliament by which railway companies unable to meet their engagements might unite with their creditors in the preparation of "schemes of arrangement" to be filed in the court of chancery. A scheme was deemed agreed to by the holders of mortgages, bonds, stocks, rent charges, and preferred shares when assented to in writing by a designated majority of the holders of each class of security. The scheme when confirmed by the court became binidng upon the nonassenting minority and this court held it to be thus binding upon bondholders who were citizens of the United States and who used in courts of the United States to recover on their bonds. The "scheme" of the Canadian law was not unlike the "plan" of section 77. The significant part of the court's opinion, so far as the question now under discussion is concerned, is the following, which appears at page 536:

"The confirmation and legalization of 'a scheme of arrangement' under such circumstances is no more than is done in bakruptcy when a 'composition' agreement with the bankrupt debtor, if assented to by the required majority of the creditors, is made binding on the nonassenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to so conduct himself for the general good as not unnecessarily to injure another. Bakrupt laws have been in force in England for more than three centuries, and they had their origin in the Roman law. The Constitution expressly empowers the Congress of the United States to establish such laws. Every member of a political community must necessarily part with some of the rights which, as an individual not affected by his relation to others, he might have retained. Such occasions make up the consideration he gives for the obligation of the body politic to protect him in life, liberty, and property. Bankrupt laws, whatever may be the form they assume, are of that character."

After pointing out that the Canadian law was in accordance with the policy of the English and Canadian governments in dealing with embarrassed and insolvent railway companies; that it took the place in England and Canada of foreclosure sales in the United States "which in general accomplish substantially the same result with more expense and greater delay," the court added (p. 539):

"* * * It is in entire harmony with the spirit of bankrupt laws, the binding force of which, upon those who are subject to the jurisdiction, is recognized by all civilized nations. It is not in conflict with the Constitution of the United States, which, although prohibiting States from passing laws inspiring the obligation of contracts, allows Congress 'to establish * * * uniform laws on the subject of bankruptcy throughout the United States.' Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail."



It is unnecessary to consider the criticism, sometimes made, that these excerpts are dicta merely, since we are of opinion that they are sound in principle.

It follows, from what has now been said, that section 77, in its general scope and aim, is within the power conferred by the bankruptcy clause of the Constitution; and we so hold.

Now that was a case, Mr. Chairman, where one of the questions involved was the right of the court to administer the bankruptcy proceeding in the case of the Rock Island to restrain a sale of securities which had been pledged as collateral for loans to the bank, and in connection with that question it was discussed at length before the Supreme Court of the United States.

The CHAIRMAN. I must confess that I have not given this bill careful consideration because my time has been occupied with other legislation.

Mr. FLETCHER. Mr. Chairman, if you need any support to that statement I will be glad to make affidavit that you have been very busy in other quarters.

The CHAIRMAN. You may go ahead with your statement.

Mr. FLETCHER. That Court, in passing upon the particular question that was before them in that case, had occasion, responding to certain objections that had been made at the bar, to pass upon this whole question of the power of Congress to deal with situations where there had been no actual insolvency, which was the basis, as you know, for the most part, for bankruptcy legislation, but cases where the company found itself unable to meet its obligations and was in difficulties, which might be permanent or which might be temporary.

If any member of this committee has any doubt of the constitutionality of a bill of this kind, if you will read those two pages of the decision I think you will find it to be helpful.

I also call attention to the case of *United States* v. *Bekins*——

Senator JOHNSON of Colorado (interposing). You will put that in the record, will you?

Mr. FLETCHER. Would you like placed in the record the language I depend upon?

Senator JOHNSON of Colorado. Yes.

Mr. FLETCHER. I would be glad to read it or can hand it to the committee reporter as he may put it in, if you prefer that.

Senator JOHNSON of Colorado. Just give it to the committee reporter and let him put it in.

Mr. FLETCHER. Well, it consists of three printed pages and I believe it was understood that that has to go in.

Senator JOHNSON of Colorado. You are now referring to the *Rock Island Railway case.*

Mr. FLETCHER. Yes.

Senator JOHNSON of Colorado. And now, how about the other case.

Mr. FLETCHER. In the case of *United States* v. *Bekins*, which was decided on April 25, 1938, and which appears in volume 304, U. S. No. 1, there is some language, found on page 47 of that opinion, which I should also like to have included in the record:

First: Chapter X of the Bankruptcy Act is limited to voluntary proceedings for the composition of debts. Aside from the question as to the power of the Congress to provide this method of relief for the described taxing agencies, it is well settled that a proceeding for composition is in its nature within the Federal bankruptcy power. Compositions were authorized by the Bankruptcy Act of 1867, as amended by the act of 1874 (c. 390, par. 17, 18 Stat. 182). It is un-

necessary to the validity of such a proceeding that it should result in an adjudication of bankruptcy. *In re Reiman* (20 Fed. Cas. 490, 496, 497); *Continental National Bank* v. *Chicago, R. I. & P. Ry. Co.* (294 U. S. 648, 672, 673). In the *Continental Bank case*, in the course of a full consideration of the scope of the Federal bankruptcy power and of the evolution of its exercise, we said:

"The constitutionality of the old provision for a composition is not open to doubt. *In re Reiman* (20 Fed. Cas. 490, 496–497), cited with approval in *Hanover National Bank* v. *Moyses, supra.* (186 U. S. at p. 187.) That provision was there sustained upon the broad ground that the 'subject of bankruptcies' was nothing less than 'the subject of the relations between an insolvent or nonpaying or fraudulent debtor, and his creditors, extending to his and their relief.' That it was not necessary for the proceedings to be carried through in bankruptcy was held not to warrant the objection that the provision did not constitute a law on the subject of bankruptcies."

That was the case in which, as all members of the committee will remember, the court held, upon the second appeal, it was constitutional to provide that municipalities might take advantage of the bankruptcy law and be relieved of their obligations through the proc esses of the bankruptcy law.

The first bill on that subject, as I recall it, was declared unconstitutional by the Supreme Court of the United States, by a narrow margin. That bill was amended so as to take care of some of the points mentioned in the opinion of the Supreme Court, and it was afterward held to be constitutional.

In the *Bekins case*, 87 percent of the creditors had agreed to the plan, and I think anybody reading that language I mentioned, on page 47 here, of the opinion, will come indubitably to the conclusion that a composition bill of this kind is free from objection on constitutional grounds.

Now, coming back to my effort to analyze this bill, I call attention to section 705, which is the section dealing with definitions. I do not propose to go over these definitions in detail because they are easily understood. It defines petitioner, what constitutes claims and creditors, and the only suggestion I want to make on this subject of leases is that perhaps paragraph 2, on page 2 of the bill, defining claims, might be improved so as to make certain situations a little clearer than they are if there were added after the word "petitioner" in line 20, page 2, this language, which would constitute a new sentence that I am suggesting:

In the event that a plan of adjustment contemplates the modification of a railroad lease, and it is necessary to determine the amount of the claim of the holder of stocks of the lessor, or of any class thereof, the amount of such claim shall have the par value of such stock at the time outstanding.

The reason why that suggestion is made, Mr. Chairman, is that if you are going to modify leases you have to determine the total amount of all claims so that you can see whether you have 75 percent of the amount. Now there might be some difficulty in determining just what is the amount of a claim where there is a contract under which the lessee pays rent to the lessor based upon the amount of dividends on the outstanding capital stock. In order to make that clear this amendment is suggested, which would provide that the amount of the claim of stockholders of the lessor company would be the total amount of the par value of outstanding stock. And it would clear up, I think, any difficulty that might arise in connection with such leases.



Along the line of my previous suggestion I would like to suggest that there be inserted after the word "securities" in line 12, page 3, the word "leases". That would correspond to the change I suggested in line 7 of page 2.

Going to section 706 of the bill: That is a familiar section, which provides that no creditor shall be deemed to be affected by any plan unless such plan proposes a modification of the evidence of debt or other instrument defining the rights of such creditor——

The CHAIRMAN (interposing). What section is that?

Mr. FLETCHER. It is section 706, line 13, page 3, of the bill. It is a clause which provides in simple language that no creditor shall be affected by the plan unless the plan proposes some modification of his rights. I think that is clear.

Now we come to the procedural part of the bill. The first thing that has to be done under this bill is for the stockholders, which means the company, to formulate a plan. That plan has to be submitted to the creditors and at least 25 percent of the creditors must assent to the plan before it can even be filed as an initial proceeding with the Interstate Commerce Commission.

When this bill was drawn originally there was no provision for requiring any particular number of creditors to assent as a condition precedent to the filing of an application with the Commission. But it was thought it would be better to have the consent of at least 25 percent of the creditors before any steps should be taken under this bill. In other words it was suggested that railroads might get up a plan without having consulted their creditors, and file an application with the Interstate Commerce Commission when there was no rational hope of getting any substantial number of creditors to agree to it; that it would be a disturbing thing to do, and that it would be proper not to take any step whatever unless at least 25 percent of the creditors had agreed to the plan.

So that with this first step, which is to file with the Interstate Commerce Commission a petition, it would have to show of course that 25 percent of the creditors had agreed to that plan; and then the matter is taken for the first time before the Interstate Commerce Commission. I call attention also to the fact that in the very preliminary recitals in section 710 it is provided that a railroad corporation in process of reorganization under section 77, cannot avail itself of the provisions of this bill.

The CHAIRMAN. Coming back to section 706, it says:

No creditor shall be deemed to be "affected" by any plan unless such plan proposes a modification of the evidence of debt or other instrument defining the rights of such creditor or a modification of the security, if any, for the claim of such creditor.

That creditor might be adversely affected without their asking for a modification of his particular security.

Mr. FLETCHER. I do not think so.

Senator WHITE. Would not the fact of dealing with a security, any evidence of indebtedness, either junior or senior of a particular class of creditor, affect its situation?

The CHAIRMAN. I think it would be bound to affect him one way or the other.

Mr. FLETCHER. It might help him.

The CHAIRMAN. And it might be a detriment.

Mr. FLETCHER. It might be a help to him, and I do not see how it could be a detriment to him. Let us suppose it is a first mortgage, and that——

Senator WHITE (interposing). That is not what it says. It says any creditor affected.

Mr. FLETCHER. If the creditor is helped by a plan he need not be brought into the proceeding at all.

Senator JOHNSON of Colorado. In other words, the effect must be damaging.

Mr. FLETCHER. That is the meaning of the phrase as I understand it.

Senator TOBEY. Why not put in the word "adversely" before the word "affected?"

Mr. FLETCHER. I think this is precisely the language of section 77, if I am not mistaken.

Senator TOBEY. Even so we might improve on section 77.

Mr. FLETCHER. That may be so.

Senator TOBEY. There is nothing sacrosanct around here.

Mr. FLETCHER. No; I think the word "affected" there must be construed with what follows. The man is not supposed to be interested in the plan unless there is a modification of his debt.

The CHAIRMAN. It seems to me there should be language in there defining it.

Mr. FLETCHER. Well, I would not have any objection to that in order to make it perfectly clear. I had supposed it was clear enough in the light of the language in previous bankruptcy statutes and the way it had been construed and handled by the courts.

Now, Mr. Chairman, shall I go on wtih my statement?

The CHAIRMAN. Yes.

Mr. FLETCHER. The reason I think it is necessary to submit this matter to the Interstate Commerce Commission is because under section 28 of the Interstate Commerce Act as it now stands, and it will be some other section if S. 2009 becomes a law, but the amendment will not be changed nor the language needed, it will be necessary for the Interstate Commerce Commission to authorize the issuance of certain securities to carry the plan into effect. There was no disposition on the part of this bill to interfere with the authority of the Commission in that respect. So the Interstate Commerce Commission takes this plan, if it has been approved already by 25 percent of the creditors, looks at the plan for the purpose of finding out whether it would be in the public interest for them to issue the securities which the new plan requires to be issued; and the plan may very well and usually does provide for the issuance of additional securities or securities in some other form than that which prevailed before the machinery of the bill is in effect. Therefore it must go to the Commission for them to see if the proposed modification of securities is in the public interest.

May I make this suggestion, on line 10, that that phrase is a little involved.

The CHAIRMAN. You are speaking of page 4 of the bill?

Mr. FLETCHER. Yes.

The CHAIRMAN. It says:

> Thereafter obtained an order of the Commission, under section 20 (a) of the Interstate Commerce Act authorizing the issuance or modification of securities as proposed by such plan of adjustment (other than securities held by, or to be issued to, Reconstruction Finance Corporation)—



Mr. FLETCHER. Yes; but they do not come in there, really, because the Reconstruction Finance Corporation Act itself takes care of that.

The CHAIRMAN. Why not put them in?

Mr. FLETCHER. I wanted to suggest a change in line 10 where it now recites:

> Modification of securities is in the public interest—

to something like this:

> Modification of securities is compatible with the public interest.

That is to say, it makes quite a difference whether you use one phrase or the other. If you say it is to be in the public interest you must have a confirmative finding that public interest is thereby promoted; whereas, if you say "compatible with the public interest" you mean if the public interest is not thereby adversely affected. I therefore make that suggestion for a change.

The CHAIRMAN. You mean to say that the securities in themselves are in the public interest?

Mr. FLETCHER. They should not be issued if they are inconsistent with the public interest.

The CHAIRMAN. Should they issue them at all unless they are in fact in the public interest?

Mr. FLETCHER. That sounds like a distinction without a difference, but it is not that. They may say: "I do not think this will hurt the public interest." And the management may say the public interest will not be hurt. My theory of the law is they ought to be required to prove it. The other theory is they will say: "No; these do not help anybody and we won't let you do it." I think they should prove in this it is hurtful to the public interest, otherwise you do not give the management any control at all.

The CHAIRMAN. You give the management authority to issue the securities but you simply say to the Interstate Commerce Commission: You should not issue it unless it is in the public interest.

Mr. FLETCHER. Well, you should not issue them if inconsistent with the public interest. That is the difference.

Senator WHITE. Your theory is that if it is beneficial to the management and the stockholders it ought to be done in event there is a finding it does not harm anyone else?

Mr. FLETCHER. Yes; and that is very hard to show, I can say.

Senator JOHNSON of Colorado. The words "public interest" are hard to define. In these cases it would depend upon one man's judgment against that of another.

Mr. FLETCHER. But the judgment of the Interstate Commerce Commission must control. If they say: This issuance you are trying to get out will hurt the public interest—then you cannot do it. But if they say; We do not see how the public interest will be harmed; and if you think it won't hurt the railroad, you may go ahead because the public will not step in and veto it.

The language in the latter part of subsection (2) on page 4 is similar to section 20 (a) of the present law, that it must be consistent with the continuance by the railroad corporation of service to the public as a common carrier.

The CHAIRMAN. Where are you reading?

Mr. FLETCHER. Lines 11 and 12, page 4. And it goes on to say: and will not impair its ability to perform such service. After all, gentlemen of the committee, that is important language that the Commission must safeguard, namely, service to the public. They are required by this act to make a specific finding as to that service, which is the thing the public is greatly interested in, that it will not be impaired in any way. 9

Now, the next step, if the Interstate Commerce Commission issues its order permitting the issuance of those securities and makes those findings that it is compatible with the public interest, will be to prepare and file your petition with the appropriate court. I have stated that before you can go to the Interstate Commerce Commission you have to have the assent of 25 percent of the creditors. The thing steps up now so that before you can go to court—

The CHAIRMAN (interposing). Let me ask you this question right there: We have before us a reorganization bill, creating a special court, and that bill will probably be reported from committee within a few days. Would not this language have to be changed, depending upon which bill is passed?

Senator WHITE. It simply causes a transfer, as I see it, from a district court to the new special court.

The CHAIRMAN. I am not so sure about that.

Mr. FLETCHER. I would be of opinion that unless you put something in this bill here which we are now considering to provide it should go to the new reorganization court, it would remain as stated in this bill, because this is so different.

The CHAIRMAN. If we are going to have a special court for reorganizations, then they all ought to go to the same court.

Mr. FLETCHER. Well, I had supposed there would be a difference, but I am not going to be contentious about that.

The CHAIRMAN. I do not think you should be. I think they should all go to the same court; that if you are going to establish a special court for reorganizations they ought all to go to that court.

Mr. FLETCHER. Well, that is one point of view, but I am not convinced it is the correct point of view.

The CHAIRMAN. I can understand that there might be a difference of opinion about it, but I think they should all go there in that event.

Mr. FLETCHER. Well, it could be written into this bill. But as an humble lawyer I do not believe it would have that effect unless you did write something in to cover it.

The CHAIRMAN. Well, we can do that.

Senator WHITE. If we pass this bill at all and it becomes a law, it would probably be done prior to the enactment of both houses of Congress of S. 2009. If that is so, would it not be a simple case of transfer to the courts in S. 2009?

Senator TOBEY. You mean S. 1869.

Senator WHITE. All right. I have given the wrong bill number.

The CHAIRMAN. There would have to be some language in this bill to cover it.

Senator JOHNSON of Colorado. You will have a multitude of ways to proceed in bankruptcy, under section 77 of the old law, and under S. 1869, your proposed law, and then under this bill.



The CHAIRMAN. No; because you see S. 1869 would supplant the old bankruptcy law.

Senator JOHNSON of Colorado. It will take the place of section 77?

The CHAIRMAN. Yes.

Senator JOHNSON of Colorado. Then section 77 is entirely eliminated?

The CHAIRMAN. It transfers it to the special court.

Mr. FLETCHER. I started to say that before you could proceed now to file your petition with the court, after you had received the assent of the Interstate Commerce Commission, you have to get the consent of two-thirds of the creditors as a whole, and at least 50 percent of the creditors of each class. The theory of the bill is that between the time when you file your petition with the Interstate Commerce Commission and the time when you go into court with your proceeding, you will have stepped up your consents from 25 percent of the whole to 66⅔ percent of the whole, and that there must be at least a majority of each class which has assented to the plan before the court could have jurisdiction of the proceedings.

And I might say in that connection that by a later provision of this bill it is stated that the Interstate Commerce Commission must dispose of this application within 120 days, the purpose being not to allow a thing to remain for a long time in the Interstate Commerce Commission, which would not be in the interest of expedition, and it was thought that 120 days would be a reasonable time in which the Commission could pass upon a question of whether they would allow the issuance of securities contemplated by the plan.

The CHAIRMAN. I would like to ask if it is practicable, and of course you would know more about that than I would, to have a limit of 120 days. Is that a sufficient length of time?

Mr. FLETCHER. I think so. I do not want to be criticizing the Interstate Commerce Commission, because I have great respect for them, but I believe there would be no difficulty within 4 months of hearing the parties and determining whether the plan is proper or not. People can do a lot of things within a short time if it is necessary.

This bill provides that the district court which has jurisdiction of these cases will be the court where exists the principal executive or operating office of the railroad. That is the same so far as venue is concerned in section 77.

Now, there must be an averment in the petition filed with the court that the carrier is unable to meet its debts matured or about to mature, and that is essentially a jurisdictional question.

That is an important provision in this bill because it is necessary, of course, as I have stated, that we are proceeding here under the bankruptcy law, and it is essential to the jurisdiction of the court that there should be the jurisdictional averment that the carrier is unable to meet its debts, and that brings it squarely within the purview of the decisions I mentioned a while ago.

Now, Mr. Chairman, I called attention to the fact that this bill provides that if a railroad now in receivership——

The CHAIRMAN (interposing). Please point out the different sections of the bill as you refer to them.

Mr. FLETCHER. I refer to the paragraph at the top of page 5, which is a part of section 710, and it clearly provides that a railroad now in receivership may take advantage of the provisions of this bill.

And it provides that the petition shall be filed in the court which has primary jurisdiction over the receivership proceeding. I understand there is some difference of opinion among those who have studied this question as to whether railroads now in receivership should be permitted to come into this bill.

The CHAIRMAN. I do not think they should.

Mr. FLETCHER. This bill provides that they should be permitted, and I personally think so, but I do not intend to spend a great deal of time arguing that point.

Senator WHITE. You say you think they should be permitted to come under this bill?

Mr. FLETCHER. Yes; I have an idea that any court administering a receivership would probably approve a plan which was assented to by 75 percent of the creditors if that matter came up in the course of the receivership proceeding.

The CHAIRMAN. Again I say there is the question whether or not we are going to permit the railroads to go on hanging simply by an eyelash, and to go on in that manner indefinitely. When we passed the Reconstruction Finance Corporation Act, about 8 or 9 years ago, or perhaps not that long ago, argument was made on the floor of the Senate: If we pass this bill and lend the railroads some money everything will be lovely. But notwithstanding the passage of that act they have been hanging on ever since that time. I hope that things will pick up and get prosperous, and that the railroads will be able to be prosperous, and all of them keep out of bankruptcy. On the other hand I do think you will have to be realistic about it, and after you have had a period of 8 or 9 years that I speak of, you cannot expect they are going to have great prosperity, particularly with other forms of transportation coming in competition against them.

Mr. FLETCHER. The only issue I take with that statement, and I do it with great deference, of course, is that I think you misapprehend the effect of this bill. I do not think it will have any such effect. I do not think it is a thing that postpones the evil day. I do not think that is the idea of it at all.

The CHAIRMAN. Let us take the case of the Baltimore & Ohio Railroad: That plan simply delays matters for a period of 8 years, and that is the plan this bill was drafted to accommodate. That is a frank statement about it. Now, in my judgment that simply puts off the evil day. I am willing to try to work it out for the Baltimore & Ohio because they have gone to a great deal of trouble, time, and expense, and have worked out a plan, but I do not think anyone can contend seriously, and I have not heard anybody outside of those interested in it who felt that that is what it accomplishes. We all hope it will work out; but there are a great many people who are much wiser with references to railroads and who have had vastly more experience in financial matters and everything else than I have had, who do not subscribe to that idea with reference to it. I look upon this proposal as an emergency measure, to help out some railroad that has already gone into bankruptcy. If you are going to have it take in all railroads, then I am frank to say I cannot subscribe to the general principle expressed in this bill.

Mr. FLETCHER. Won't you reserve judgment on it?

The CHAIRMAN. Well, I will do the best I can toward that end.



Mr. FLETCHER. I want to say in commenting upon the statement made by the chairman that I think it is true that the effort of the Baltimore & Ohio Railroad to agree with its creditors first brought this matter sharply to the attention of the railroad industry and to the country. I do not think, however, the bill is anything else than a helpful one even if it may be applied to other railroads. Personally I know of only two railroads, to be perfectly frank with you, that have gone so far as to agree with the requested number of their creditors and who have so far received the approval of the Interstate Commerce Commission for the issuance of securities. That is the Baltimore & Ohio and the Lehigh Valley. But I am speaking here now of a bill which will be general in its application.

The CHAIRMAN. I understand that.

Mr. FLETCHER. I certainly do not want to say a word that would prevent relief to the Baltimore & Ohio and the Lehigh Valley, that they expect to get from this bill. They will explain their situations by their own witnesses, but I want to say I think this is a good bill for those who can avail themselves of it, whether the Baltimore & Ohio, Lehigh Valley, or other railroads.

The CHAIRMAN. Has the plan of the Lehigh Valley been approved by the Interstate Commerce Commission?

Mr. FLETCHER. I so understand.

The CHAIRMAN. What percentage of creditors of the Lehigh Valley assented to the plan?

Mr. FLETCHER. I do not know that I could answer that question.

Mr. ANDERSON. I think above 80 percent.

Mr. FLETCHER. There may be someone from the Lehigh Valley present who can tell us exactly.

Mr. ANDERSON. I do not think there is anyone from the Lehigh Valley here, but this is my information about it.

Mr. FLETCHER. I think Colonel Anderson's information is correct on that point.

The CHAIRMAN. What I have said is not simply my view with reference to it, but as I stated before, it represents the views of individuals who have spoken to me about it, persons I think who know a great deal more about finances and everything else in regard to transportation than I do, and I know they are extremely doubtful about having it applied generally to railroads.

Mr. FLETCHER. I would not be able to gage their views, Mr. Chairman. I have not heard them publicly expressed. I know there was a great deal of apprehension at one time——

The CHAIRMAN (interposing). I have before me Finance Docket 12284 of the Interstate Commerce Commission relating to the Lehigh Valley Railroad Co. and subsidiaries' financial readjustments from which I read:

> As of December 10, 1938, assents to the plan had been received from holders of 82.47 percent of the Lehigh's general consolidated mortgage bonds, 84.95 percent of the Canal Co.'s bonds, 84.61 percent of the Railway Co.'s bonds, and 90.83 percent of the Lehigh Valley Terminal Railway Co. (hereinafter called the Terminal Co.) bonds. These issues comprise the bonds affected by the plan. As os January 28, 1939, the percentages shown have increased to 83.22 percent for the Lehigh's general consolidated mortgage bonds, 85.16 percent for the Canal Co.'s bonds, 85.70 percent for the Railway Co.'s bonds, and 91.13 percent for the Terminal bonds.

Mr. FLETCHER. All right, Mr. Chairman.

The CHAIRMAN. You may go ahead with your statement.

Mr. FLETCHER. I started to say there was some apprehension felt in so-called financial circles, among those who own securities and are dealers in securities, that the effect of this bill would be to impair railroad credit. But I think that view has disappeared, and for the most part that class of persons now believe it would be helpful to railroad credit rather than the contrary.

The CHAIRMAN. That is not the view expressed now privately.

Mr. FLETCHER. I understand that that view is not unanimous. The minority would naturally express those views where they thought they would be most effective.

The CHAIRMAN. It is not the minority, but people who have been engaged in financing railroads, and they have stated to me quite frankly that they feel it would hurt the credit of railroads generally if this bill went into effect.

Mr. FLETCHER. I will tell you what I think the view is, and I have heard it too, not publicly, but from certain people: The view seems to prevail that if you make it easy for railroads to reorganize, railroad managements would be disposed—but I do not think it is a sound view, I want to say, and I do not think it is an apprehension they need give concern about—but I have heard it said: Well, railroad people administering these railroads will be spending their money on improving their roads, their tracks, and perhaps be complacent in allowing increases in wages to their employees, when they ought to be spending all their time and thought in knowing how to meet their obligations. And they want to make it as hard as possible for a railroad to be reorganized, so that every dollar which can possibly be spared will be applied to the payment of obligations, of principal and interest, whereas this bill they are afraid will produce on the minds of railroad officers something like a feeling of complacency, which would permit the use of those funds, not in the payment of obligations but in improving the property, and thereby doing that which every railroad officer would like to do, get his property in the best possible condition. That is the thought I have heard.

The CHAIRMAN. If they have expressed it that way to you they have not expressed it in that way to me.

Mr. FLETCHER. While I think they were unwise to so express it to you, I take it they wanted to make it painful. Their very jobs are at stake if they go through bankruptcy. You might oust them and put a trustee in.

The CHAIRMAN. Perhaps they think they will do a better job.

Mr. FLETCHER. I think they will hesitate quite a little while before they lay on obligations. I do not think that railroad officers are of a type to do a thing of that kind. That is the only fear I have heard expressed by the owners of securities.

Now, if I may go along: Section 711 is a section which is similar to the one found in 77. I do not need to go through it. It deals with subsidiary railroads. If a railroad is an operating company, and——

The CHAIRMAN (interposing). What section of the bill is that?

Mr. FLETCHER. Section 711, page 5. It provides that the operating subsidiary may, if they have complied with all other provisions of the law, file their petition in the same court where the parent company has filed its petition, and the proceedings will go along with the subsidiaries, so that the system as a whole may be reorganized in accordance with the provisions of the plan. It is a provision to the end that a railroad which is a subsidiary of another railroad need not file its petition in its home office but in its own office. I might cite as an illustration a railroad with which I was so long connected, the Illinois Central, which has no thought in having this plan, that it would have to file its original petition at Chicago. It has a very important operating subsidiary, the Yazoo & Mississippi Valley, which has its home office in Memphis. This would enable the Yazoo & Mississippi Valley to file its petition in the same court, at Chicago, where the original petition was filed.



I now pass on to section 712, which is the filing-fee provision. I take it I need not take up any time on that. Then I come to section 713, at the bottom of page 5 of the bill, and it extends over on to page 6. That provision calls for the organization of a three-judge court when a petition has been filed in the appropriate district court. The clause was written with the idea that there had been some criticism, whether just or unjust I am not here to say, of the action of individual Federal judges in the handling of these matters, and, therefore, they thought it would be better to have, following the practice which prevails where a suit is brought to set aside an order of the Interstate Commerce Commission, or a State statute, or an order of a State Commission, there could be organized a three-judge court, in which one judge must be a circuit judge, and that this three-judge court would have jurisdiction of this matter and conduct it to a conclusion.

I do not see any objection to that. I think it is a salutary provision. I think in a matter of this kind, where a court is called upon to pass upon the rights of the parties, and important orders are at stake, it would add to the confidence which the public had in the final determination of the matter if you had a three-judge court. That was the thought, I think. There is a considerable body of legislation that so provides in certain classes of cases.

One of the first duties of that court would be, as explained in the final sentence of this paragraph, that claims would be classified as the court might direct. That is necessary in every bankruptcy proceeding of this kind.

Now, passing on to section 714, there is a familiar provision, borrowed from section 77, that requires the court to pass an order approving the petition as being properly filed or dismissing if it not properly filed.

Now, Mr. Chairman, section 715, beginning about the middle of page 6, on line 15, is a very important provision which gives——

Senator WHITE (interposing). Doubtless I ought to know what section 266 of the Judicial Code is, but I do not recall it for the moment. What is it?

Mr. FLETCHER. That is the procedure which deals with the organization of three-judge courts in certain cases.

Senator WHITE. Will you tell me how they are organized?

Mr. FLETCHER. This is what happens: You file your suit in the district court. If it is a suit which under the statute requires a three-judge court, the district judge calls on two other judges, one of whom must be a circuit judge. It just provides the machinery for bringing

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in judges. I suppose I have tried as many cases before three judges as most people of my age, and I think it has not resulted in delay, nor has there been any unsatisfactory feature connected with it.

Senator WHITE. All right.

Mr. FLETCHER. Section 715 gives the court exclusive jurisdiction over the property from the time when the proceedings are pending, and gives them the right to protect the property against actions which might be brought inconsistent with the plan of adjustment. That is a provision which should be in every statute passed on the bankruptcy theory. And there is a special provision down here that the court shall not have the power to appoint a trustee, nor take possession of the property, nor control its operation or administration during the time when these proceedings are going on.

The CHAIRMAN. Why should it not have that authority?

Mr. FLETCHER. Because it is the theory of this bill that it is not necessary to appoint trustees and have trustese take over possession of the property during the rather limited time when this court is passing upon the question of approving the agreement. It would be an additional expense and would be entirely unnecessary, and therefore that proviso is put in to make clear that the management will remain in control of the property during the time the investigation is going on.

Now, section 720, beginning on page 7, is a familiar provision requiring that hearings must be had so that all persons involved, including those who have not agreed to the plan, shall be given the right to come into court, after notice, present their objections and say anything they may want to say in regard to the matter. And provisions are put in whereby the court is required to allow the intervention of all interested parties, whether holders of securities or not, if they can show that they have any real interest in the controversy. In other words, going back to the previous discussion, if there should be holders of securities that are technically affected by the plan, they would have the right to come in and present their views.

Senator WHITE. Let me ask you this question right there: Section 715 gives to the court jurisdiction over the petitioner, which is the railroad corporation, I take it?

Mr. FLETCHER. Yes.

Senator WHITE. And of its property, but is there any way in which the court has jurisdiction over security holders except as those security holders voluntarily come into court?

Mr. FLETCHER. There is a provision, which will appear later, Senator White, which provides that the court will have the right to enjoin anybody from bringing a suit on any securities during the time this is in process of adjudication.

Senator WHITE. What I was wondering about was this: Is there any way by which the court in its jurisdiction over the securities and security holders gets such jurisdiction other than by their voluntary appearance?

Mr. FLETCHER. They have to be notified. Process has to issue to all security owners, giving them notice of the proceedings.

The CHAIRMAN. Where is that?

Mr. FLETCHER. Section 77.

Senator WHITE. Suppose they do not come in voluntarily, has the court authority to deal with them and with their securities?



Mr. FLETCHER. Assuming, now, they have been properly notified?

Senator WHITE. Yes; and do not voluntarily come in.

Mr. FLETCHER. Certainly. It is just like any other composition in bankruptcy. They have been given notice that their interests will be affected. They know what the plan is and if they do not choose to appear and protest the court might approve the plan that might have some effect upon their holdings, no doubt, but that would be no more than approving a composition.

Senator WHITE. I do not understand about giving notice.

The CHAIRMAN. Section 720, page 7, says the special court shall fix a date for a hearing, and that notice will be given to all creditors affected by the plan in such manner as the court shall direct.

Senator WHITE. That gets them into court, does it?

The CHAIRMAN. The question is whether or not that would get them into court. How is the court going to direct them? A general notice might be given. I think there should be some specific way of notifying creditors.

Mr. FLETCHER. We thought that could be left to the court, because a court ought to be and I think would be mindful of the requirements of due process.

Senator WHITE. Is it necessary to have any specific provision giving the court that authority, or is it inherent in the court?

Mr. FLETCHER. It is inherent in the court, I think. No court will bind a minority except through due process of law, and due process of law is giving notice and an opportunity to be heard.

The CHAIRMAN. You say the special court shall give notice after the filing of petitions. In one provision you say they shall promptly hear, and next you say notice shall be given to all creditors. The fact of the matter is he might direct the publication of notice, and if you are going to hurriedly put it through there might be creditors who will not get any hearing at all.

Mr. FLETCHER. I think you have to trust to the court to take no action that would——

The CHAIRMAN (continuing). Ordinarily, when you say you are going to give them notice in a lawsuit you specify in your statute the kind of notice you are going to give them. You do not simply say the court can give any kind of notice it sees fit. I have had experience with courts, and have known courts that did not give a litigant the notice he ought to have in order to properly prepare his case, or the kind of notice he should have. The court might have it published in a newspaper not in the city where the railroad is, and that all must take notice from that. I think you ought to have some proper language there.

Mr. FLETCHER. I have no objection to its being made clearer.

The CHAIRMAN. There might be creditors who might not be in this country at all, and they might not get notice. You do not say that the court shall service notice by registered mail or that notice shall be given in some specific way that will assure the parties being heard. While ordinarily a court would give the required notice, yet I think it should be clear.

Mr. FLETCHER. My idea would be if I were a judge, if such a thing may be imagined, I would say that all creditors where the process of the court runs, shall have notice served by the United States marshal, and that would cover the United States; and as to foreign creditors, there should be notice by registered mail.

The CHAIRMAN. Why not write it in here?

Mr. FLETCHER. I have no objection to that.

The CHAIRMAN. I think you might get some courts that would not handle it properly. I do not see any harm in its being written in here, and think it should be in the bill.

Mr. FLETCHER. As one who advocates this bill, if it would be in any way a convenience to you gentlemen by my suggesting a modification, I will try to do it.

The CHAIRMAN. I think your suggestion just made that it should be served by a United States marshal when they reside in the United States, and by registered mail when outside the United States, might very well cover it.

Mr. FLETCHER. Very well.

The CHAIRMAN. I think something could be worked out that would cover the situation, and I think it should be more than is contained in the bill at the present time.

Mr. FLETCHER. In section 721 the court is given the power to approve the plan, and is also given the power to modify the plan; and of course if the plan is modified and the court finds it will substantially or adversely affect the interests of any class, then that plan as modified must be resubmitted to the class so affected in the manner the court shall direct. And a reasonable time must be given in which those, who are thus adversely affected by any modification of plan, shall have the right to come back into court and be heard on that, which seems to be entirely fair.

I find I am taking too much of your time and will hurry on. Section 722 is a clause put into protect the interests of the United States, especially with regard to taxes and customs duties, and I do not think it requires much consideration here. It means that no plan shall be approved if it has the effect of reducing the amount of taxes which are due, or the amount of customs duties which are due, unless the Secretary of the Treasury approves.

The CHAIRMAN. As I understand it, the Treasury Department wants to be heard on this bill.

Mr. FLETCHER. They made some suggestions before the House committee, and we agreed with them on a great many of their suggestions. I do not think they were entirely satisfied with them.

The CHAIRMAN. Well, they want to make some suggestions here.

Mr. FLETCHER. Section 725 deals with proceedings subsequent to approval of petition. That is a very important provision. The whole section is important. It deals with what findings must be made by the court before a plan can be approved.

The first paragraph requires the court to find that, before the petition was filed with the court, they had this consent of two-thirds of the credits as a whole and 50-percent of the majority. Then before a final decree can be entered assents are stepped up by this bill, as provided in subparagraph (2) of section 725, so that before the plan can be finally approved it must have the assent of three-fourths of the aggregate amount of claims affected by said plan, and at least 60 percent in amount of the claims belonging to each class as that class has been drafted by the court. In other words, we have three steps here: 25 percent before you can go to the Commission, 66⅔ percent before you can go to the court, and 75 percent before the plan can be finally approved.



Now, I have heard some criticism from some very high sources that that 75 percent is too high; that it ought to be 66⅔ percent because that is the percentage required under section 77. But for the purpose of making it clear that the assets of a very large majority of the creditors must be obtained, this figure has been placed at 75 percent, and I hope if the committee gives favorable consideration to the bill they will leave that figure as it is.

Subsection (3) is a very important provision. It goes to some of the things discussed here. It provides when the court must make a finding, or rather, I should say, that the court must make a finding that the plan is fair and equitable, is in the public interest, and——

The CHAIRMAN (interposing). Let me ask you this question right there: Why was the language used, "if the special court be satisfied"? Why shouldn't it be "if the special court finds," and so on?

Mr. FLETCHER. If you think that is the better way, let us use it.

The CHAIRMAN. That is the ordinary language that is used.

Mr. FLETCHER. I suppose that was put in there without much thought as to the difference between "shall be satisfied" or "if the court finds."

The CHAIRMAN. The language should be not "if the court is satisfied" but "if the court finds."

Mr. FLETCHER. I do not think we have any objection to that.

The CHAIRMAN. That is the ordinary language that is used. I was wondering why.

Mr. FLETCHER. I do not think there is any particular reason. It just did not occur to the draftsman at the time, I imagine.

Now, I am going back to this subparagraph 3. Here is what the court finds [reading]:

That the plan is fair and equitable, is compatible with the public interest——

The CHAIRMAN. That it "is in the public interest."

Mr. FLETCHER. I mean, I think it ought to be changed to compatible or consistent. [Reading further:]

affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders.

That is the language of section 77 in that respect; so that the standard before the court is the same as it is in the bankruptcy law. The court must find all of those things before the plan can be approved.

How, then, can it be said, may I ask—and I am speaking now rhetorically—how can it be said that there is any postponing of the evil day when the court has got to make the same findings that it makes under section 77 as to the rights of the parties, the fairness of the plan, its consistence with the public interest, the rights of all the creditors and what has been established as legal rights in the matter of priority and preferences? I wonder if it has not occurred to somebody—it certainly has to me—that all of this bankruptcy legislation provided in section 77 is unnecessarily complex, and that it might be simplified along lines which are hinted at and suggested in this bill—although I am not here now saying that this should be taken as a substitute for section 77, because its application is limited only to those who have agreed to it.

Unless there are questions on that, I will pass to subparagraph 4, another important provision [reading]:

> That all corporate action required to authorize the issuance or modification of securities pursuant to such plan shall have been duly taken.

After the word "securities" I would like to put in the words "or leases."

There has been a good deal of discussion here and there, Mr. Chairman, in one place or another, about the rights of stockholders. But you see this plan is put forward by the stockholders. Necessary corporate action must be taken by the stockholders under the law of the State where the railroad company has been incorporated, and whatever that law requires as to how corporate action shall be taken must be complied with. Sometimes it may require the assent of two thirds of the stockholders. Whatever the provision may be under the charter of the particular railroad, that must be complied with. The plan is put forward by the stockholders and the plan, as I said before, might contemplate some modification of the rights of stockholders.

The CHAIRMAN. When you come down to page 10, line 11, it says [reading]:

> The plan of adjustment may contain appropriate provisions whereby the interests of creditors affected by the plan shall be safeguarded in all matters of the petitioner's financial policy and operations.

Why do you say that the plan of adjustment "may contain"? Why should it not be "shall contain"?

Mr. FLETCHER. I did not put that in there, Mr. Chairman. I don't know just why that was put in there. It was put in by somebody in connection with the House action. I don't think it amounts to very much as a whole; but I certainly would object to the use of word "shall." If it means anything at all, it means that the court shall undertake to determine what shall be the future financial policy and the method of operation of the railroad.

The CHAIRMAN. It says [reading]:

> The plan of adjustment may contain appropriate provisions whereby the interests of creditors affected by the plan shall be safeguarded in all matters of the petitioner's financial policy and operations.

I was wondering just what that language means. If you put in a provision saying that the plan of adjustment may contain appropriate provisions, and so forth, it may or may not contain them. If it is proper to have it in there at all, why should it not provide that it shall contain "appropriate provisions whereby the interests of creditors affected by the plan shall be safeguarded in all matters of the petitioner's financial policy and operations"?

Mr. FLETCHER. I do not think it ought to be in there at all, myself—that whole clause. I think it is an inappropriate thing to put into the act. But if you are going to say anything about it, I do not think the Congress would intend that the plan had to contain some recital as to what the policies should be.

The CHAIRMAN. But, does it mean that? [Reading:]

> The plan of adjustment may contain appropriate provisions whereby the interests of creditors affected by the plan shall be safeguarded in all matters of the petitioner's financial policy and operations.

Mr. FLETCHER. It was put in over my protest.

The CHAIRMAN. Was it put in in the House?



Mr. FLETCHER. Yes; I think it was.

Senator WHITE. Does not paragraph 3 on page 9 specify what the plan shall accomplish?

Mr. FLETCHER. It provides the standards; yes.

Senator WHITE. This is either just repetition, or it is something different from the specifications.

Mr. FLETCHER. Something that ought not to be in there, in my humble judgment. It means, as I understand it, that the plan may provide what they shall do in the future about the issuance of bonds, the borrowing of money, from whom they shall borrow it, how they shall borrow it, what the operating ratio shall be, things which have nothing to do with this plan.

Senator WHITE. Why should it not be incorporated as part of paragraph 3 on page 9 instead of being set out as a separate paragraph?

Mr. FLETCHER. I think that would be more appropriate, perhaps; but this paragraph as it reads now does not require any action by the court, Senator. It just simply deal with what might be in the plan.

Mr. ANDERSON. Might I interrupt you to explain that?

Mr. FLETCHER. I know I did not put it in.

Mr. ANDERSON. I will say that that clause was put in at the request of certain security interests, the idea being that they might want to have a committee to supervise the handling of the financial interests of the company and its budget. They can refuse to assent to the plan unless that is in there. We did not want it in, but as a matter of adjustment, in the case of the Baltimore & Ohio plan, we told them very frankly if they wanted the members of the board to take the responsibility of management Mr. Willard would be glad to have suitable members on the board. That is the way this particular clause originated, and it was put in by the committee of the House at the request of security interests. It was opposed by the proponents of the plan.

Mr. FLETCHER. It was consented to rather than approved, I would say, Colonel Anderson, and rather reluctantly by me.

The CHAIRMAN. Did the bill as originally drafted have this in it?

Mr. FLETCHER. No, sir. That was put in in the House. It has reference only to the plan of adjustment. I do not suppose there would be any reason why the plan of adjustment should not contain something of this kind, but I certainly would object to the word "shall," Mr. Chairman. I think it just destroys it entirely. Maybe the creditors would want to do it. It would force them to put something in the plan which would have to do with the future operation and financial control of the property. If it is to be left in there at all, I think the change of "may" to "shall" would be most unfortunate.

I want now, in connection with section 725, to call attention to a proviso on page 10, beginning with line 4. Equipment-trust obligations are not under this plan.

The CHAIRMAN. Why are they not under the plan?

Mr. FLETCHER. There is a special reason for that. Equipment-trust obligations are among the best of all the securities which the railroad companies issue. They are a direct lien, of course, upon the property iteself.

The CHAIRMAN. The bonds are a direct lien, too, are they not?

Mr. FLETCHER. They are; but I would like to reframe what I had to say by saying that under the usual plan for issuing equipment-

trust certificates the title to the property remains in the person who loans the money, and it takes the form of a conditional sale under which the title remains in the possession of the persons who furnish the money until there has been made a complete payment. The payments are called for annually. Those equipment-trust certificates are a very good investment. Even railroads that are in financial difficulties have had very little difficulty in selling equipment-trust certificates. I venture the assertion that they would be snapped up by banks right now, with their great quantities of surplus deposits in their vaults, with great avidity, if there was a general issuance of those trust certificates. The equipment is the life-blood of the railroad. It cannot go on, of course, without cars and engines. The necessity for buying new equipment is a very great necessity; and it was the thought of those who considered this plan that equipment-trust certificates were so different from any other kinds of obligations which a railroad issues that they ought to be set aside and not made subject to this plan at all.

The CHAIRMAN. What you are afraid of is that if you put that into the plan you destroy the credit of the railroad with reference to equipment trusts?

Mr. FLETCHER. No; I do not think that is right. The credit of the railroad is not quite the right expression. It might have some effect upon the salability of that particular type, which is of a very peculiar nature and different from any other kinds of securities that I know anything about. The legal title to the equipment is not in the railroad ordinarily until the payment is made.

The CHAIRMAN. They are creditors of the railroads, however.

Mr. FLETCHER. They are owners of the equipment.

The CHAIRMAN. How are they affected in bankruptcy?

Mr. FLETCHER. The same way.

The CHAIRMAN. The same way as they are here?

Mr. FLETCHER. Yes.

Mr. ANDERSON. This language is taken from section 77, sir.

The CHAIRMAN. If we put it in here you feel that it would destroy the chance of selling equipment trusts?

Mr. FLETCHER. I think it might possibly have the effect of making them less salable than they are now.

The CHAIRMAN. But you do not think that putting ordinary bonds in here would make them less salable?

Mr. FLETCHER. No. They are of a different type and character; they are of a different class of security. They do not rest upon the same legal principles.

Senator TOBEY. Not as well secured, in other words.

Senator WHITE. The real fear is that you would not be able to get, with the same facility that you do now, the necessary equipment?

Mr. FLETCHER. It might disturb the whole plan whereby these equipment trust certificates are sold and whereby the railroad, although it may be in difficulties elsewhere, has been able to keep up its equipment so essential to any efficient operation of the railroads.

The CHAIRMAN. We have got to recess now. We will recess until 2:30. If Mr. Berle is available at that time, we will hear him.

Mr. FLETCHER. I think I can finish in 15 minutes, Mr. Chairman.

The CHAIRMAN. If we do not hear him today he will have to leave town and will not be back until Tuesday.



Mr. FLETCHER. I would like to have the committee hear Colonel Anderson, who is an attorney for the Baltimore & Ohio Railroad, and perhaps Mr. Willard.

The CHAIRMAN. We are going to hear them.

(Whereupon, at 12:15 p. m., a recess was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

The committee resumed, at 2:30 p. m., on the expiration of the recess.

The CHAIRMAN. The committee will resume.

**STATEMENT OF R. V. FLETCHER, GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS, TRANSPORTATION BUILDING, WASHINGTON, D. C.—Resumed**

Mr. FLETCHER. Section 726 of the bill, which I had reached in my review, provides merely this, that during the pendency of proceedings the court shall have the power to enjoin anybody from bringing a suit, or enjoin an effort to throw a railroad into bankruptcy, or to throw it into receivership. That power attaches to the court after the filing of the petition in court. It was thought to be necessary in order to prevent the bringing of suits by people who might not be in sympathy with the plan to reorganize.

There is a proviso which was thought to be desirable, at the top of page 11:

> That no such stay shall affect any proceeding to enforce any claim which would be required to be paid if the plan of adjustment proposed by the petitioner were then in effect.

That fits in very well with section 728, which I will mention in a moment.

Senator WHITE. What nature of claims would there be?

Mr. FLETCHER. You see, Senator White, I am just thinking about what would happen. As an illustration take the Lehigh Valley: They have agreed with 82 percent of their creditors to modify the plan in a way which would give them an extension of time on certain obligations which fell due, I believe, the first of March. Now, they have 82 suits brought by people against them at this time.

Senator WHITE. This does not relate to any particular class or kind of claims?

Mr. FLETCHER. No. It means that all claimants must forego whatever remedies they may have under contracts until this proceeding is concluded.

Senator WHITE. I did not know but what it was a particular type of claim.

Mr. FLETCHER. Not at all. It means any effort to put a railroad into receivership or bankruptcy, or suits at law particularly to recover judgment on account of amounts due, that they may be restrained by the court during the process of these proceedings.

Now, section 727 limits the time to a year. In other words, the court only has a year in which to handle this matter, unless for good cause on motion of a party in interest the court shall extend the time, the purpose being to bring about expedition.

Section 728 is an interesting section. If proceedings are instituted by a railroad it must continue to pay whatever amounts it has obligated itself to pay under the plan. It does not mean, of course, it must go on and pay all amounts called for under any such contracts or obligations, but during the time the proceedings are going on the railroad must continue to pay to its creditors whatever amounts the plan provides shall be paid, and in the way the plan provides, the idea being that these people ought not to be prevented from receiving payments in accordance with the plan while the proceedings are going on.

The statute also provides if there is a failure to make payments the court shall dismiss the proceedings unless good cause is shown for such failure.

Senator TOBEY. If the plan does not go through, what payments are to be made?

Mr. FLETCHER. They would be taken as a credit against the original charge.

Senator TOBEY. All right.

Mr. FLETCHER. Now, section 729 is a provision which has to do with the giving of a bond, and the petitioner may require bonds or other security, including interest coupons affected by such payments to be presented to or deposited with a paying agent or depositary named by the petitioner for appropriate stamping to show the amounts and circumstances of such payments.

Section 735 is a provision which is the same, I think, as in section 77, which has generally been approved by the Treasury Department in open deals, the point being as to exchange of securities or the issuance of new securities a railroad shall not be called upon to pay an income tax on alleged paper profits necessary to effect the plan.

Section 736 was put in at the instance of the Treasury Department, to keep the Treasury Department informed of what is going on, and they asked that the Treasury be furnished with copies of all papers enumerated in that section.

Section 740, at the bottom of page 13, is a provision I have already mentioned, namely, requiring the Commission to make its decision in the first instance within 120 days.

Section 745 provides that any final action taken by this Reorganization Court may be reviewed by the Supreme Court of the United States on a writ of certiorari.

Section 746 was thought to be a useful provision to the effect that if in the making of a final decree it is necessary for the court, in its opinion to observe what happens under the plan and proposes to exercise some supervisory or visitorial power over the execution of the plan, the court may retain jurisdiction for that purpose.

Section 755, the last one I shall mention, provides that this shall be in effect only 5 years. As the bill was originally drawn that limit was not in there, but was put in by the House, so that the law will, by reason of this provision, expire in 5 years.

And that, Mr. Chairman, completes my hasty review of the provisions of the bill.

(Thereupon Mr. Fletcher left the committee table.)

The CHAIRMAN. We will now hear Mr. Berle.



## STATEMENT OF A. A. BERLE, JR., WASHINGTON, D. C.

The CHAIRMAN. State your name for the benefit of the committee.

Mr. BERLE. My name is A. A. Berle, Jr.

The CHAIRMAN. Mr. Berle, you have had considerable experience with railroad reorganizations and have given a great deal of study and thought to railroad reorganizations and railroad financing, I believe?

Mr. BERLE. Yes, Mr. Chairman.

The CHAIRMAN. You may go ahead.

Mr. BERLE. Let me say at the outset that I am Assistant Secretary of State. Naturally the State Department has no interest in this proceeding. I appear here because I was the head of the Railroad Division of the Reconstruction Finance Corporation, and special counsel to that Division, for some years. In that connection we had a great deal to do with railroad reorganizations, and that Division of the R. F. C. still does.

Senator WHITE. Do you appear at the instance of the Reconstruction Finance Corporation?

Mr. BERLE. I do not. I appear at my own instance. Let me say for the record, however, that before appearing I have consulted with my former associates of the R. F. C., and I believe that the views I express are in agreement with theirs. I do not, however, purport to speak for them. They are able to speak for themselves.

Senator WHITE. I thought that ought to be made clear on the record.

Mr. BERLE. I thank you.

Senator TOBEY. Was your first connection with railroad reorganizations with the R. F. C.?

Mr. BERLE. No. I had worked on them before in the private practice of law.

Senator TOBEY. In what work did you begin?

Mr. BERLE. I think the first one I actually worked on was in 1920–21 as a clerk in a New York law office, and at intervals from then on as cases happened that involved that kind of work that we had. I do not claim, however, to be a great railroad reorganization lawyer. I was also associate professor of corporation finance at Columbia University, and in that connection there has to be considerable academic study as well.

The CHAIRMAN. You may go ahead with your statement.

Mr. BERLE. The bill now before your committee, H. R. 5407, which I am referring to here as the Chandler bill because that is its familiar title, of course had its origin in a desire to do something to relieve the difficulties of the Baltimore & Ohio Railroad. And in a somewhat similar category there was also the Lehigh Valley Railroad. The managements of both these railroads had conceived, as I understand it, the idea of working out a voluntary composition with their creditors. In pursuance of that plan both of them did work out plans, both of them secured the assent of a very large number of their creditors, and both of them obtained the authority to issue the revised securities called for by those plans in a proceeding before the Interstate Commerce Commission under section 20 (a) of the Interstate Commerce Act. I mention that because it will become relevant in a moment as a proposed test.

The Chandler bill is drawn as a composition act. That is to say, it is not strictly a bankruptcy act nor does it follow the technical procedure under a banruptcy act. It really is assimilable to that section in the personal or private bankruptcy act which permits a debtor to call in his creditors, to state frankly that he wishes to be left in the management of the property and to have an interest therein, and to ask their grace in permitting him to do so. In return for this he agrees to pay some part of their debt at a stated time or times. If they agree the bankruptcy court may confirm that arrangement as a composition and permit him to go forward. And this is really an attempt to translate that procedure in a greater or lesser degree into the railroad field.

Now, so far as the cases of the Baltimore & Ohio Railroad and the Lehigh Valley Railroad are concerned, and more particularly the Baltimore & Ohio, I have no objection to the passage of an act to permit that to be done. In my judgment the Baltimore & Ohio is a railroad which conceivably might use that kind of an act to some advantage. I further believe that there ought to be some recognition given to the fact that the Baltimore & Ohio Railroad and the Lehigh Valley Railroad did do a great deal of work, and have expended a great deal of money, and have given a great deal of time and gone to considerable trouble in an endeavor to work out a plan, and they have got assents. For that reason any suggestions as I presently shall offer, for amending this bill, I think consideration legitimately could be given to those railroads. It is in the opening up of the entire field that I find very grave difficulty.

Now, beyond the specific situation of these railroads this particular bill has seven or eight difficulties which I should like to address myself to, if I may.

The CHAIRMAN. We will be glad to hear you.

Mr. BERLE. First of all, this bill purports to apply not only to roads which may hereafter become embarrassed, but also to railroads which are now in equity receivership and which are actually in reorganization under section 77 of the Bankruptcy Act. It does not in terms purport to do so, but——

The CHAIRMAN (interposing). Pardon me, Mr. Berle, but I was interrupted for a moment and I did not catch that statement. Will you repeat it?

Mr. BERLE. I say that this bill actually applies not only to roads which may hereafter become embarrassed, but to roads which are now actually in equity receivership or in reorganization under section 77 of the Bankruptcy Act. I realize that on a first reading of the bill it does not purport to do so. Article 710 says that—

> Any railroad corporation not in process of reorganizaton under section 77 of the Bankruptcy Act which, before or after the effective date of this chapter, shall have—

That it may do thus and so, which would apparently exclude railroads already in reorganization. But actually there is nothing to prevent a railroad in reorganization under section 77 today from moving to dismiss that proceeding after a suitable lapse of time, and thereupon fleeing to the provisions of this act.

Further, if a court having jurisdiction under section 77 sought to stop them from so doing, counsel for the railroads thus fleeing to this act would at once point to the language of Mr. Chandler when the bill went to the House, and would there find that Mr. Chandler had specifically stated, in securing the passage of this bill, that it would be available to railroads in section 77, which would seem to indicate that the Congress in passing this act had in mind a method of taking roads now in 77 reorganization, out from under it and putting them under this act. And the court I think would have considerable difficulty, in the face of that language, in holding that it could not dismiss an existing reorganization approval proceeding if the railroads so wished, and could proceed under this act.



I realize, of course, that the legalistics of this matter are extremely dull, and so I will try for the moment to give a picture of what I think would probably happen as soon as the bar really got to work on it.

Under section 77 as it now stands a very large number of roads are in reorganization. Hearings have been had before the Interstate Commerce Commission. The hearings are complete. Their draft plans have in some cases already been revised, and revised plans in accordance with the Interstate Commerce Commission's standards are now at or near a stage of completion. A road or a management or a group which did not like a plan finally propounded and approved by the Interstate Commerce Commission, would do this: It would sit quiet. It would seek to discourage the getting of the necessary assents to that plan. It would let the proceedings drag for a while. And then it would come into court and urge: You see the Interstate Commerce Commission has proposed a plan but nobody accedes to the plan, nothing is happening, and this is going on forever. Therefore, we would like to dismiss the proceeding and put through a plan more to our liking. Now, that, gentlemen of the committee, frankly is what I think would happen, and what I think may even have already been thought of in certain quarters.

Senator TOBEY. Do you think that was in the minds of those who wrote the bill?

Mr. BERLE. I do not undertake to say. All I say is, the reorganization bar is a very long, heavy bar.

Senator TOBEY. And you would close the door to any such procedure?

Mr. BERLE. Yes. That would mean the waste of an enormous amount of time and work the Interstate Commerce Commission has done over a period of a couple of years. In the second place, to all intents and purposes it removes the control of the plan from the jurisdiction of the Interstate Commerce Commission, where the Congress placed it some years ago.

Now, the second objection that I have is that——

The CHAIRMAN (interposing). I can say to you that if I have anything to say about it, it will be amended to take care of that situation.

Mr. BERLE. I am glad to find someone agrees. This bill was so unanimously approved that when I ventured to write you a letter I felt very lonely indeed. I did not have anybody——

The CHAIRMAN (continuing). Well, it does not always signify very much that certain plans are unanimously approved because we sometimes put legislation through the House or Senate that people do not give very much consideration to at the time.

Mr. BERLE. There is a second objection which I have to this bill, and that is that the plan of composition contemplated by this bill is not to be approved by the Interstate Commerce Commission. Again

I realize that on a superficial reading of the bill it looks as though it were to be approved, and I regret to find that in advocating this bill a number of its proponents have vigorously asserted that the plan had so to be approved. Actually that is not the case.

Under section 710, subdivision 2, beginning at line 9 and running on from the bottom, it is required that an order of the Commission under section 20 (a) of the Interstate Commerce Act be obtained.

The CHAIRMAN. How is that, again?

Mr. BERLE. Under subdivision 2 it is required that an order of the Commission under section 20 (a) of the Interstate Commerce Act be obtained. The language in that section thereafter follows closer to the language in section 20 (a) of the Interstate Commerce Act. And because there was a slight deviation from that language, counsel has already urged this committee to amend it so as to make it exactly to conform.

Now, why that? Well, the reason is that under section 20 (a) of the Interstate Commerce Act the Interstate Commerce Commission has already held that it had no jurisdiction to pass on the merits of a plan. It so held in the specific case of the Baltimore & Ohio Railroad financial readjustment, and you will find the decision in Finance Docket 12150, decided November 1, 1938. And I——

The CHAIRMAN (interposing). I have the language before me. It is to the effect that before making the arrangement effective substantially all security owners affected by it must consent but they are not asked to approve the plan as such.

Mr. BERLE. That is right. I might also add that I understand that to be in substance the consistent attitude which the Interstate Commerce Commission has taken. That is, that the authority to approve the issuance of securities under a plan of reorganization do not include authority to pass on the merits of the plan as such. For that reason when it is said that this act is safeguarded as are reorganizations under 77, I can only answer that the Interstate Commerce Commission does not so consider it and does not consider that it has the power to exercise that protection.

Senator TOBEY. Is it not an anomaly that the Commission should not have the power to pass on both? Does it not seem so to you?

Mr. BERLE. Yes, sir.

Senator TOBEY. It is rudimentarily wrong.

Mr. BERLE. Yes; that is simply out. I may say, Senator, if you will permit me, that I am not convinced the Interstate Commerce Commission needed to take so narrow a view of its authority under section 20 (a), but it has done so and done so consistently over a period of time, so that there is no point in our argument. I would rather see the language of the bill carry the definite meaning.

Senator TOBEY. In line 10 Judge Fletcher called our attention to the fact that in his judgment the words "in the public interest" should be amended to read "compatible with the public interest." Leaving out of consideration for the moment what you may think was the intent of everybody there, if you were writing this bill de novo, would you put that in?

Mr. BERLE. I was planning to go forward and give you some suggestions, but I do not see why I should not answer that now: I should say to strike out "proposed issuance or modification of securities" and I should say "on a specific finding that such a plan is in the public interest."



Senator TOBEY. It would be well if once in a while we did find one that we considered to be in the public inerest.

Mr. BERLE. Yes; once in a great while, particularly in a railroad reorganization plan.

The CHAIRMAN. Some of these people think a reorganization plan is not important so far as public interest is concerned so long as the security holders are satisfied.

Senator TOBEY. Yes; what about the St. Paul receivership?

Mr. BERLE. Which one of them?

Senator TOBEY. Well, all of them, ad infinitum, ad nauseam.

Mr. BERLE. My third point as to the specific difficulty with this bill lies in the fact that the Chandler bill forbids the court to appoint a trustee or receiver or indeed any other kind of representative of creditors. Now, it enjoins creditors from enforcing any rights, so that the creditor is helpless. The management represents, of course, the stockholding interest, or even if it represents the creditors' interests there are all kinds and classes of conflicting claims. Sometimes it will represent two or three railroads working together because of subsidiary or other relationship. I do not mean to say that all railroad managements are corrupt or weak or deceptive or anything of the kind, but my own impression of them is that they are just like other people.

The CHAIRMAN. Yes; they are like other people. They are doubtless as good and as bad as any other group.

Mr. BERLE. I think that is true, and I have good friends among them. But you put them in a somewhat impossible position at best, and you debar the court from taking any effective action.

Now, the fourth——

The CHAIRMAN (interposing). Before you get to that, let me ask: Of course, they come back and say that section 720 provides that the special court shall fix a date for hearing to be held promptly after the filing of the petition and notice of such hearing or hearings shall be given to all creditors affected by the plan in such manner as the court shall direct. In such proceeding the court may allow such intervention of parties in interest as it may deem just and proper, but any holder of securities of the petitioner shall have the right to present evidence and be heard thereon, in person or by attorney, with or without intervention. Now, the contention I assume is that that provision would take care of all of the different creditors because of the fact that they would have the right to appear after notice. But I called attention this morning to the fact that it does not say what kind of notice the court can send, and he can send any kind of notice he sees fit. He might say it is proper to publish a notice in a newspaper where the court is sitting, and they might not have personal notice. So that, of course, would have to be changed in my judgment.

Mr. BERLE. I imagine that could be considerably improved, Senator Wheeler. Of course, it is true that where you have many thousands of bondholders personal notice to all of them would be physically unworkable. But there you have to do the best you can.

I do not concede the right of a bondholder to appear in court, however, as equivalent to having somebody to protect his interest should the situation be such as to require that.

My fourth objection may at first blush seem odd, but I think it is warranted by experience. The composition now contemplated by the bill can be accepted by three-fourths of the aggregate amount of claims, including three-fifths of the claims of each class. I believe

that that percentage is too large. I think it is quite sufficient if the majority be reduced to two-thirds of the aggregate amount of claims and of the majority in amount of each class. But that is because I believe the bill should be amended to provide for adequate protection of the plan. I realize that this sounds odd, because prima facie it would seem as though a larger percentage would look like a larger protection.

What actually would happen, however, if I may try my hand out and draw a practical picture, is this: A plan would be proposed. There would be no alternative in the field; actually, the necessary large majority would be accumulated. It would then be taken before the court. The court would have in mind that if it modified or changed the plan in any way, that very large majority once more would have to be obtained. Therefore, the pressure on the court to make no change, but to accept it as it was, would be very great. Otherwise, the court would be in a position, very conceivably, of having no reorganization at all, and the sound instinct of every good judge is to try to get the job done and out of his court.

He would, therefore, say to himself, I think, if he were an honest judge and a conscientious one, "There are many features about this plan I do not like, but on the whole it is better than to draw this thing into an endless morass, from which I can see no present escape. I cannot initiate a plan myself. If I could, there is no machinery by which I could put it through. There is no alternative plan, so in spite of the injustices I would rather accept this than do nothing."

If, however, there were a smaller majority, so that an amended, modified, or revised plan by the court were more equitable and more feasible, I think a judge would be more likely to exercise the power which the Act gives him.

My fifth objection relates to what I surmise is a very subtle point of strategy. I may be unduly suspicious in that regard. This has to do with section 725, subparagraph 3, and it looks splendid.

Senator NEELY. May I inquire whether the objections which you are now making were presented to the Committee of the House that reported the bill?

Mr. BERLE. No, Senator, they were not. I should like to say I did not consider, since I was working quite hard in the State Department where I do work at my job, that I was particularly concerned. Frankly, it never occurred to me that the bill would reach this stage without some one thoroughly analyzing it. I woke up one morning to discover that it had been reported out and that it had been passed unanimously by the House, apparently with no serious analysis at all.

At that point I got sufficiently excited to write a letetr to Senator Wheeler. I am not charged with primary responsibility for this, and I did not get into action until late.

The CHAIRMAN. I may say to Senator Neely that Mr. Berle was formerly connected with the Reconstruction Finance Corporation in its railroad division. He served there for a considerable length of time and had a great deal to do with reorganizations during that time and prior thereto.

Mr. BERLE. Section 725, subparagraph 3, requires the special court to determine that a plan is fair and equitable, and there follows language that is almost exactly the language appearing in section 77 of the existing Bankruptcy Act. It is good language, and it sounds first rate



Senator NEELY. Is not that language identical with that of the Municipal Bankruptcy Act?

Mr. BERLE. I believe it is, yes, sir; I think this is the same thing. I had something to do with that. I had a good deal to do with the drafting of that in the very early days of this act of 1933. It was subsequently improved by your committee in connection with the Municipal Bankruptcy Act, and followed likewise in the revision of the Railroad Bankruptcy Act, section 77.

You would think at first blush that this meant that the court would apply the same test to this kind of plan as the court would apply under section 77. But actually the court will not be in that position at all, for a court under section 77 is applying this test to a plan which has already been approved by the Interstate Commerce Commission, as to which the court itself has ample power of revision, and as to which it often has machinery in its hands, through the trustee, if it so desires, to try to secure adoption of the plan; whereas, this is not a bankruptcy act but is a composition act, and the court merely has to determine whether when a very large part of the creditors have already assented and requested the court to approve this plan, in view of the assent, the plan conforms to these tests.

Since the debtor itself—that is, the stock interest—will in every case be the proponent of the plan, you need not exercise any imagination to realize that a plan under the Chandler Act will invariably take care of the stock interest. Indeed, the theory of the act is that it shall apply to those railroads where the stock interest has a right to be considered—that is, railroads in the position of a debtor who feels that he can legitimately ask his creditors for grace in view of his own position and his own efforts.

Now, to take a decision under this act and use that as a precedent in section 77 merely means that you will be wiping out all the protection the bondholders now get under section 77. I may be unduly suspicious, but I think that the intent was that you would get a holding, in connection with the Baltimore & Ohio, or the Lehigh Valley plan, that the plan conformed to these tests and that that precedent would immediately be used in the case of the Frisco, the Chicago, Minneapolis & St. Paul, and every other railroad, and it would then be argued before a court that a plan which cut down the creditors and left the stock all standing—in other words, abrogated the priority rules—was fair and equitable, in the public interest, duly recognized the rights of each class of creditors and stockholders, and conformed to the law of the land.

In other words, I think that someone here was looking for a good precedent arising out of this act, to be used in connection with proceedings under an entirely different act, with a view to breaking up that unhappy tendency which courts have, as they do now, to say, "The bondholders paid for a prior lien, and they ought to get a prior lien."

I need merely point out that if you have that kind of precedent applied to a thing like the Van Sweringen pyramid, for instance, you would get some surprising results. I propose, therefore, that that language be varied, so that the approval of a plan under this act can

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in no way be used as a precedent for approval of a plan under section 77. That may be unduly suspicious——

The CHAIRMAN. Whether it is suspicious or whether it is not, I cannot believe that the drafters of the bill intended it as such, but——

Mr. BERLE. The danger is there.

The CHAIRMAN. The danger is there, regardless of whether or not they intended to have it that way. Probably they did not, but it certainly could be used as a precedent by, say, the Van Sweringen group or some other crowd who came in and held stock interests.

Mr. BERLE. What I am really getting at can be stated very simply. A plan might very well be approved as a fair compromise, and the court might be quite right in so approving. That would not make it right for the court to approve a plan of reorganization which did not represent a compromise but represented something being rammed down their throats without their consent, which, of course, is the theory of bankruptcy.

Mr. FLETCHER. I assent to the amendment suggested by Mr. Berle.

Mr. BERLE. If that could be stated of record, that would help a good deal.

You would consent to that?

Mr. FLETCHER. I would consent to that.

Mr. BERLE. I think that is fair, because there is a very great danger. Under this act you would have a three judge court, which would be as a precedent—a very persuasive precedent—to a single district judge.

The CHAIRMAN. That is right, much more so than by a single judge.

Mr. BERLE. By a single judge; yes.

My next objection is an elementary one. Under the Chandler Act there is no control of any kind of lawyers' fees or reorganization fees or committee fees or side arrangements for voting trusts, or anything of that kind.

For some years it has been the settled policy of the Congress to provide for control of those fees. This was provided under section 77. I believe that this act should be so amended, to provide that the fees in connection with reorganization proceedings should be under the control of the courts and of the Interstate Commerce Commission, as they are now, and I think that section 725 ought to be amended in this case.

Finally, there is one little joker in this, if it is a joker; it is difficult to tell. Let me withdraw the unkind word, if I may, because that implies an evil intent, and I do not mean to do that.

Senator TOBEY. That implies humorous intent. Of course, it is grim humor.

Mr. BERLE. The habit of a lawyer is to study an act under which he is operating, and if he sees a hole, he goes through it.

This is in section 729. It is apparently a formal provision. It provides that in providing for any payment to be made under the plan, the petitioner may require a bond or other security to be stamped to show "The amounts and circumstances of such payment."

Well, "amounts" is all right.

The CHAIRMAN. Where are you reading?

Mr. BERLE. Section 729, page 12, line 8 and 9.

When you say "and circumstances," frankly I am a little frightened. It is natural that if you are making only a part payment on a bond or a coupon, you should stamp how much you have paid and how much you have not; but if you were entitled to hitch on to the payment a set of conditions, you may require as a condition precedent even to getting your payment, assent to a lot of things loosely defined by the word "circumstances," which might mean anything. It seems to me that the words "and circumstances" ought to be taken out.



The CHAIRMAN. I do not quite understand you. Can you give me a practical example of what you are saying?

Mr. BERLE. At its worst, if somebody were feeling really cutthroat about it, you would be invited to present your bond or your coupon, and when you got your payment, the coupon would be stamped, "This evidences the receipt of blank dollars in respect of coupon number so and so. Acceptance of this payment shall constitute a waiver by the recipient of" rights of one sort or another, depending on what you agree to enumerate.

You do not have to assent to it, it is true, but in that case neither do you get any payment. That is a technique which is not usually followed here; we see it done in the foreign bond field quite often. I do not mean to indicate that anybody necessarily would do it, but I do not see any reason why we should leave it open.

Senator NEELY. If the words "and circumstances," were stricken out, would the language be appropriate?

Mr. BERLE. Strike out "and circumstances."

Now, the final point I have to make has to do with the time limitation of the act, but if the suggestion I am about to make is adopted, the time limitation would become meaningless. If I may, I should like to submit at the close of my statement a copy of the bill with the amendments which I personally would suggest. It seems to me that line 6 in the title—that is the enactment clause—should be amended to read, after the word "chapter" in line 6, "for the relief of debtor railroads."

The reason for that is to distinguish this from a bankruptcy act and to make it look more like a composition act.

The CHAIRMAN. That would then read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act of July 1, 1898, entitled "An Act to establish a uniform system of Bankruptcy throughout the United States", as amended, is hereby further amended by adding thereto a new chapter for the relief of debtor railroads, to be designated chapter XV and to read as follows:

Mr. BERLE. "For the relief of debtor railroads." I shall submit this, if I may, afterward.

In section 705, subparagraph 1, lines 13 and 14, on page 2, I should like to strike out the words: "including any corporation in equity receivership."

Senator WHITE. Will you please indicate again where that is?

Mr. BERLE. Page 2, lines 13 and 14. I would strike out after the words "Interstate Commerce Act," "including any corporation in equity receivership."

Senator WHITE. Before going on, I should like to ask you a question. You used the phrase in your first suggested amendment "debtor railroads." Should there be any definition of a debtor railroad?

Mr. BERLE. I do not think so, sir. I think that every railroad is a debtor. I think that that, particularly since this is merely in the nature of a descriptive clause, does not need definition. I cannot imagine a railroad that is not a debtor getting in under this act anyhow.

My reason for suggesting the change in section 705, subparagraph 1, is this: A corporation in equity receivership may if it chooses go under section 77 and have a good job of reorganization done. If we are right in the theory that this ought not to apply to railroads now in equity receivership or under section 77, then those words have no place here.

On page 3, line 19, I should amend section 710 by inserting after the words "Any railroad corporation not" the words "in equity receivership nor".

Then, in any process of reorganization under section 77, that would mean that this act was available only to railroads not now in equity receivership nor under section 77.

In line 21 of that same paragraph, section 710, I should strike out after the word "before" the words "or after the effective date of this chapter" and insert the words in place thereof "May 1, 1939." It would then read:

> Any railroad corporation not in equity receivership nor in process of reorganization under section 77 of the Bankruptcy Act, which, before May 1, 1939, shall have——

and so on.

In that case, this would presumably apply to the two cases mentioned, the Baltimore & Ohio and the Lehigh Valley, which have complied with these conditions and would thereby recognize the particular situation of those roads, the work which has been done, and the Interstate Commerce Commission's authority. I think that that would be advisable in view of that situation.

I may also say that I have thought that what has been done in the case of the Baltimore & Ohio is probably as good a job as can be done in the immediate situation.

Senator TOBEY. The question arises as to the fairness of that procedure. You close the door to all save the Baltimore & Ohio and the Lehigh Valley. There may be other railroads that should come under the scope of this act and that could meet the conditions if they had the chance. We are closing the door to fair play all around if you stop them in this bill.

Mr. BERLE. There is a good deal to be said for that theoretically, Senator, but I might say this: There are not a great many railroads in the situation of the Baltimore & Ohio. The Baltimore & Ohio happens to have a peculiar and historical place, both sentimentally and financially.

Senator TOBEY. I quite agree with you.

Mr. BERLE. It also has a rather particular earnings position. I mean by that that it is not so far sunk that you can definitely say it has no right to further time, and yet its embarrassments have been such that it may fairly ask for grace. I think you would have a hard time finding many other railroads in that position.

The CHAIRMAN. It has had a good deal of grace, has it not?

Mr. BERLE. Surprisingly enough, no. It has had a great deal of Federal money, Senator, and yet the Federal money——

The CHAIRMAN. How much money has it had?

Mr. BERLE. About 70 million.

Senator TOBEY. About 80 million.

Mr. BERLE. I think it is fair to state, however, that this has not represented an increase in the net capitalization—any considerable increase in the net capitalization—of the road. That is often very



largely refundings. For better or for worse, there we are. I may say that I feeel that——

Senator TOBEY. Your suggestion of a change in title is a misnomer or is misleading. It should primarily be an act to come to the aid of the Baltimore & Ohio and the Lehigh Valley.

Mr. BERLE. That is right.

Senator TOBEY. You are closing the door to the others.

Mr. BERLE. I do not know that I should particularly object; in a sense; yes. I believe, however, surprising as it may seem, that special acts for the relief of particular railroads are part of the historic policy of the United States. Practically every railroad in the country at some stage or another has had a special act enacted in its favor. Most of the railroads were built under special acts. The railroad structure has not grown on an even, uniform basis. The railroads have been built by act after act after act, as you know a great deal better than I.

For that reason, I do not know that we are doing anything unusual or out of the way in dealing with a particular situation by legislation more or less restricted to these facts. I may also say that the Congress of the United States is always open to any railroad to make a similar showing and ask for similar relief.

Senator TOBEY. May I ask a question that is not entirely relevant to this matter, Mr. Chairman?

The CHAIRMAN. Certainly.

Senator TOBEY. Of course, I admire your approach to this matter and your coming before us voluntarily. You speak as one having authority, and I grant that you have the authority.

Mr. BERLE. These are only my personal views; I do not claim any particular authority.

Senator TOBEY. Take the Baltimore & Ohio first, and let me preface my remarks by saying that what you said about the B. & O. is concurred in by all of us. The B. & O. is held in high regard by all of us.

The road has a tremendous capital, and the patient is sick and in the hospital. Now we come in to pass legislation particularly to aid it. But there are other roads equally as bad off, and I ask you, in your judgment and acumen, is this a fair thing to do in the interest of the public: To go to work after years and years of torture for all concerned, and try to save and patch up this sinking ship, instead of facing the facts in the case and seeing what the equity is, what the earning power is, and what the facts are? Should we not give them a drastic reorganization that will mean something definite instead of this hocus-pocus stuff? That is my question.

Mr. BERLE. Senator, you have asked a frank question, and I should like to answer it with equal, if brutal, frankness.

There has been as yet no square and forthright and frank attempt to meet the railroad situation by anybody up to date, and the reason why is that there are a great many difficulties other than the financial difficulties which ought to be solved. Every one of them involves a political issue of tremendous proportions, and the combination of them, aggregated in a railroad, has meant that nobody has quite had the nerve to walk in and take the red-hot poker.

If you want to come right down to it——

The CHAIRMAN. I think that accurately states it.

Senator TOBEY. I will accept that, but I ask you now, Is there ever going to be a regeneration of the body politic, of the United States Congress, or of anybody else, whereby we will have the nerve to tackle these problems in a forthright manner fairly and squarely?

Mr. BERLE. That, sir, is a moral question as to which I claim very little authority.

Senator TOBEY. This is the time and place to do it.

Mr. BERLE. I personally would be prepared to tackle it any time anybody wished it, if I were in a position or had a right to do so. But you do have to solve, then, a whole range of questions. You have to handle the question of consolidation, which in turn means arranging the fair terms either of dismissal or of the pension of labor.

You have to meet the local prejudices against having one railroad when they actually have two, though only one can be supported. You have to meet the fear of disturbances in case thereby the railroad facilities might be taken from one town to another.

You meet the usual difficulties as between financial interests, and when you add them all up, I can see that it takes not only a great deal of courage—it does take that—but it also takes almost superhuman wisdom.

It is not altogether the lack of guts. That is an easy thing to say. It is also that nobody has quite the answer. I personally, as everybody knows, believe in consolidation, but that also includes belief that the regulation of trucks and of the public roads necessarily follows in order; and that brings you into another range of questions in connection with the motor industry, and so forth.

So, if anyone says, "In view of our vast problem, I feel unable to tackle it," I am not in a position to throw any stones, because I think I realize the size of the problem.

Until that is done, Senator, I do feel that there is a logic in dealing with these situations temporarily, believing as I do that in the not distant future the solutions will emerge and circumstances will make logical a full and forthright attack on the whole situation. If it were not for that, if I thought that a forthright attack could be had now, I should not bother with amendments to this bill; I should say, "Do not worry about this; do not worry about the Wheeler-Truman Act; get at the main issue, which is economic and is a transportation problem, not a financial problem."

Since we have not yet got to that point, partly because of the great political difficulties involved and partly because it is extremely difficult to find a just solution, I think that the railroads can fairly say, "We are entitled to some temporary help until you pick up your direction, establish your policy, and make it effective as the law of the land."

The CHAIRMAN. Of course, there are a great many human elements that enter into it besides political elements. Political elements are in every community through which a railroad goes. If you seek to consolidate or abandon a road, you find that you will have tremendous pressure from the local communities.

Mr. BERLE. Right.

The CHAIRMAN. It is an exceedingly difficult thing to do. As a matter of fact, if you sought to consolidate all the roads that people think ought to be consolidated, there would not be enough room in the buildings of Congress to hold the people who would come here to protest anything of that nature. People from every community along



the line of the B. & O. would be up here; they would be here from every community along the line of the Milwaukee, the Great Northern, or the Pennsylvania. You would have so many of them that it would be a physical impossibility for Congress to enact legislation such as you have suggested.

Mr. BERLE. I recognize that.

The CHAIRMAN. It is a perfectly simple problem to sit down with a piece of paper and say that this ought to be done and that ought to be done, but the reason why so many businessmen make poor politicians is that while they say that this ought to be done from a business standpoint, they do not take into consideration the human element that enters into it. That is why they generally make such poor Representatives and Senators when they come to Congress.

All we can do is take a step in the right direction. I have had this situation called to my attention when it was proposed to abandon a little road up near Cape Cod. I have had the same situation in my own State, where an attempt was made to abandon a side road going up to a little town, when busses and trucks were put in. Everybody in the community petitioned me—farmers, miners, and everybody else—and said, "Don't let the Interstate Commerce Commission abandon this piece of road."

But there will have to be abandonments of pieces of road in this country. There will no doubt have to be some consolidations, as much as I hate to see it done; but everybody recognizes that there might have to be something like that done.

The question that bothers me about this legislation is this: We have been saying that the railroads are coming back. At the time the Reconstruction Finance Corporation Act was passed, if you read the statements made on the floor of the Senate, you will see that the Senators who were favoring it said that if that legislation was not passed, the railroads would go into bankruptcy, the insurance companies would go into bankruptcy, and there would be a collapse; but if the act were passed and the railroads were allowed to have some money, then everything would be all right.

We did that; we let the railroads have money. But we have only prolonged the evil day or put off the evil day; still we are asking that that evil day be further put off.

I am willing, for certain sentimental reasons, to let this apply to these two railroads; but as far as I am concerned, I am not willing to have it apply to all the railroads in the country, and I shall oppose such an effort, because I think it will be a bad thing for our economic structure in this country if that is permitted to be done.

Mr. BERLE. Senator, I agree with you.

The CHAIRMAN. I appreciate the fact that we are passing special legislation, but this bill is before us. If it is going to apply to all the railroads in this country, then I for one am going to oppose it with all the strength I can. I may not be successful, but that is what I am going to do, unless it is applied to those roads which have already had a plan approved by the Interstate Commerce Commission.

Mr. BERLE. Senator, I agree with you. The suggested language in section 710 was designed to produce exactly that effect. If it were drawn in that sense, I think that is precisely the situation you would have.

The CHAIRMAN. In other words, if it goes on, what they will do is take these roads out of receivership, get them out of 77, and there will be, in my judgment, one of the worst messes in the railroad structure of this country that there has been for a long, long time. I hope I am wrong, but I am afraid I am right.

Mr. BERLE. I cordially share your fears; in fact, that is why I am here today. I can give no better testimony than the fact that I have stepped out of my job to come up here today to speak to you about this.

The CHAIRMAN. I want to ask you this because of your experience. What will be the effect, in your opinion, upon the economy of the country, and what effect will there be with reference to prolonging the depression, if a railroad hangs on by an eyelash, so to speak, when it ought to really go into bankruptcy?

Mr. BERLE. Senator, I do not think that you can generalize, because I think it turns in each case to the particular situation of the particular railroad. In other words, I think that there is less, on the financial side, a general railroad problem than there are a series of categories of railroad problems which have to be separately dealt with.

The failure of the New Haven, for instance, in New England was a distinct shock to New England. I think that it was wise to keep the New Haven out of bankruptcy for some period of time, in view of its peculiar circumstances. I believe that that same set of considerations applies to the Baltimore & Ohio. I do not think that there was any point in getting the Frisco out of receivership. I think there the thing to do was to stand aside and let it go. However, it is always difficult to make up one's mind about a point.

My reason for not answering that question generally is, frankly, that I do not think it can be answered generally. We know that eventually we have got to clean this up.

The CHAIRMAN. What I had particular reference to was this: When a railroad is on the verge of bankruptcy, what it actually does is to cut down on expenditures for maintenance. That is the general thing. It cuts down on the maintenance and cuts down on the buying of new equipment. That of itself puts men out of work. Men are laid off on the right-of-way. That happens all along the line.

But when the railroad goes into the hands of a receiver, as the Milwaukee is, you receive complaints from other roads, such as the Great Northern and the Northern Pacific, that the road in receivership is building up its right-of-way because it does not have to pay interest on the bonds. It puts men to work improving its roadbed and it buys equipment. That actually takes place almost invariably, does it not?

Mr. BERLE. Yes; and sometimes the result is merely to put men out of work somewhere else. It is not an infrequent result where you have a competing line. The result is merely a transfer of that purchasing power and that labor of a competing, parallel line to the line now in bankruptcy.

I may also say, if you regard it as a method of creating more employment, that it is a little rough on the security holders to ask them to be virtually the unemployment relief fund for that particular neighborhood. I have a feeling that while pragmatically it works in some cases, the distribution of the burden might be quite inequitable—not always, but perhaps.



The CHAIRMAN. Well, I think there is something to that. Your idea is that this section should be amended to apply to those roads which have already had the approval of the Interstate Commerce Commission?

Mr. BERLE. It is, and therewith I would let it stand.

The CHAIRMAN. The difficulty with limiting it, say, to 1939, is this: Our experience has been that some road will perhaps come in and try to get its creditors together, they will be working on it—half a dozen committees will be working on it—and at the time of the expiration they will come down to the Congress here and say, "Give us another year." At the end of another year there will be more committees, and they will be in, saying, "Give us another year."

The first thing you know, your law becomes a permanent proposition. We pass a law and say it is a temporary, emergency measure. We have been saying that, yet we extend it and extend it and extend it.

Mr. BERLE. I agree with you entirely, and to that there is added the danger that if you had it for a fixed period of 1 year, fearing that it might not be extended, a large number of railroads which really do not need to get under this might come in, and you would have a tremendous number of proceedings of this kind within a very short time.

The CHAIRMAN. People have come to me and said privately that if this legislation were passed it would hurt railroad credit generally throughout the country. In other words, if they could get together—a majority of them—it would hurt railroad credit generally. What is your view?

Mr. BERLE. I believe that is true, Senator. It seems to me that this offers a relatively easy way for a railroad, which in practice means stock interest, to protect itself at the expense of its creditors.

The CHAIRMAN. That is right.

Mr. BERLE. Once you establish that precedence, it means that the railroad bond no longer quite means what it says.

The CHAIRMAN. After all, you can take the Van Sweringen group or the Allegheny Corporation. They could so manipulate it with their complete control through a small minority of the stockholders, and control some of these great systems. They could divert their money, spend it on something else, and put the railroad in a position where it could say, "We can't meet our fixed charges." They could do that deliberately and premeditatedly if they desired to do it, and then come in and seek a composition and pretty nearly force a composition, or else say, "We are going into bankruptcy."

Mr. BERLE. And be safely under the umbreella of the act.

The CHAIRMAN. Exactly, and be safely under the umbrella of the act.

Mr. BERLE. Of course, they would also have to mobilize creditors amounting to 25 percent of the aggregate amount of the claims.

The CHAIRMAN. Of course, this main group would not have much difficulty in doing that in some of their operations.

Senator NEELY. I desire the benefit of the opinion of both the Chairman and the witness, who are better informed——

Mr. BERLE. That I doubt, Senator——

Senator NEELY (continuing). Than the average member of the committee on the following point:

Would it be better to restrict the bill to the Baltimore and Ohio and the Lehigh Valley and thereby defeat it, or to preserve the present

language of section 710, which is broad enough to include other railroads, and thereby increase the probabilities of its passage. Some Members of the Congress have no special interest in these two railroads.

My greatest sentimental, as well as my greatest practical interest is in the Baltimore & Ohio. If I am guilty of any partiality to any high officials of railroad companies—those officials are Daniel Willard, president of the Baltimore & Ohio, and Governor John Cornwell, who is general counsel for the Baltimore & Ohio.

My desire to aid the Baltimore & Ohio impelled me to hope that the bill will not be amended to annihilation. Because the B. & O. not only needs but, in my opinion, deserves the relief which the bill is designed to provide.

The CHAIRMAN. I think this is true: This really, as it has been expressed here, is a B. & O. bill. There is no escaping that fact. The Lehigh Valley has come in since it was drafted. I think that is generally understood in the House. I think that everybody in the Senate who knows anything about it appreciates the same fact. I just do not like to limit it, but I think it is bad legislation to throw it open, because there are so many chances. As Mr. Berle has contended, it is a good plan, and so forth, but you are throwing it open, and you have not the same kind of management everywhere.

Senator NEELY. That is manifestly true. But will the suggested limitation defeat the bill?

The CHAIRMAN. I do not think it will.

Senator NEELY. Does Mr. Fletcher who speaks for many railroads, believe that the amendment would endanger the passage of the bill?

The CHAIRMAN. I can tell you in advance. He wants it to apply to every railroad in the country.

Senator NEELY. I have learned by hearing him before other committees that he usually has opinions, and invariably knows how to express them.

Mr. FLETCHER. Senator, if it is my time to speak, I do not think that limiting it to the Baltimore & Ohio and the Lehigh Valley would probably endanger its passage in the Senate, but I am not so sure about the House.

The CHAIRMAN. You know that after a bill goes to conference and comes out of conference it is usually easier to put it through as a conference report than as it was originally drafted, from a practical legislative standpoint. It is hard to defeat a bill when it comes out of a conference committee. You may defeat it in the House originally, but you dare not kill a conference report; I have tried it.

Mr. FLETCHER. I know who would be the conferees for the House.

The CHAIRMAN. I think it could be worked out in conference.

I have a letter from the Securities and Exchange Commission, which says:

> It is requested in your letter that we state whether or not it is our recommendation that H. R. 5407 should be enacted. It is our recommendation that it should not be enacted. We do not believe that improvement in reorganization procedure lies in the direction taken by the provisions of this measure.

I think you will have great difficulty in passing the legislation if it is thrown open.

Mr. BERLE. May I say likewise, if I may continue, that I have a few other slight minor changes.



On page 4, line 9, I would strike out the words "proposed issuance or modification of securities" and insert in their place the word "plan."

In that event, the Interstate Commerce Commission would have to approve any of the securities of a plan, which takes care of the point the Senator raised a moment ago.

Mr. FLETCHER. Is it out of order to comment here? I think that that would defeat the Baltimore & Ohio if you did that. It would defeat the application of the bill to the Baltimore & Ohio if you did that.

Mr. BERLE. It would mean in that case, if you got the issuance of securities through, the Baltimore & Ohio would have to submit the plan as such to the Interstate Commerce Commission.

Mr. FLETCHER. It would have to go back to the Commission again because it was not covered, as Mr. Berle pointed out, and he has read from a decision of the Commission. The Commission specifically stated—we all understood that—that they were passing just on the questions arising under section 28, namely the right to issue securities, and I do not believe they went into the point saying that they approved the plan itself.

The CHAIRMAN. That is right.

Mr. FLETCHER. I am talking about the difficulties that would confront the B. & O., and it would have to go back to the Interstate Commerce Commission.

Senator NEELY. Would that mean a delay of several months?

Mr. FLETCHER. I think so.

Mr. BERLE. If this is now to be limited to those two particular railroads, I should waive that point and leave it to the courts, because they, as we, were originally thinking this might conceivably apply to railroads not yet designated, and in that case the Interstate Commerce Commission ought to approve the plan as such. But if it is to be limited in substance to these two railroads, I should be content to let it go at that and give the court somewhat broader authority and let it go in this particular case. Then we are practically doing a special job for a special purpose under a special time limit, and in that case we could risk it.

The CHAIRMAN. And we are doing it, as a mater of fact, as emergency legislation.

Mr. FLETCHER. That takes care of my point.

The CHAIRMAN. It is emergency legislation, and we ought to look at it as emergency legislation and not as permanent legislation.

Mr. BERLE. There are several other things that I wish to say.

In section 715, lines 24 and 25, page 6, and lines 1, 2, and 3, page 7, I should strike out the provision which prevents the court from appointing a receiver or trustee. I do not see any reason for that provision being there.

On page 9, line 2, I should drop the percentage from three-fourths of the aggregate amount to two-thirds, so that, if the court on review did want to change the plan, it could do so with some chance of getting somewhere.

I would change in line 4, "three-fifths" to "a majority".

In line 6, I would strike out all beginning with the words "fair and equitable" and ending on line 12, and I would amend that section to read:

> "3" That the plan is an equitable composition.

In that case it removes any possibility that to hold that this plan is thus and so can be precedent under section 77.

At the close of subparagraph 4, between lines 15 and 16, page 9, I should insert a subparagraph (5) reading as follows:

(5) That the amounts to be paid by the petitioner or petitioners, for expenses and fees incurred in connection with the proceedings or plan, have been fully disclosed so far as they can be ascertained at date of such hearing, are reasonable, or within such maximum limits as are fixed by the Commission, pursuant to section 77 of the Bankruptcy Act, and are within such maximum limits to be subject to the approval of the court.

Even in this plan, I would not like to have a blank check written for anybody.

On page 12, lines 8 and 9, I would strike out the words "and circumstances".

If the bill were so limited as suggested, the time limit contained on page 15 would become altogether immaterial.

In conclusion, I think there is an opportunity to do a very real job here. I think that the logic of the situation is already pretty well indicated. What I really hope this committee might do, if it is not out of order as a matter of procedure, would be to report out the Wheeler-Truman bill, the Bankruptcy Act, with this as a separate title to it, and add to that the proposed bill of the Reconstruction Finance Corporation, giving it authority to finance reorganizations. You would then have a complete scheme: The revised section 77, now contained in Senate bill 1869; the special emergency composition section, now contained in H. R. 5407; and a revision of section 1 of the Reconstruction Finance Corporation Act, which would give them the additional loaning authority, making it possible for them to finance a sound reorganization.

The CHAIRMAN. What does that propose?

Mr. BERLE. This proposal has already been submitted to the House and was the proposal offered by the Reconstruction Finance Corporation in another connection. I think it is quite familiar and has already been before the House.

In that event, and if you were to adopt that procedure, I should recommend that the plan under the Chandler Act—that is, H. R. 5407—be heard not by a special three-judge court but by the special court which is proposed to be set up in the Wheeler-Truman bill. That is, in my judgment, one of the most constructive steps that can be taken to get reorganization really forward.

Senator TOBEY. I feel the same way. Pass that bill, and then take up the three judges of the railroad court.

Mr. BERLE. I did not suggest an amendment for that purpose, because we are considering H. R. 5407 on its merits. If, however, it were possible to do the complete job with the Wheeler-Truman bill, S. 1869, this composition section, and the necessary loaning authority to finance reorganizations, which will obviously be necessary, you do not, then, need the special three-judge court; you would automatically place that within the jurisdiction of and it would become the first piece of business of the new railroad court.

Gentlemen, I think that is all I have to say. I thank you very much for the courtesy.

Mr. FLETCHER. May I correct a word in my original testimony?

The CHAIRMAN. Yes.



Mr. FLETCHER. It has been called to my attention that I possibly made an error in saying that section 735, page 12, was substantially approved by the Treasury Department. I am informed by the Treasury's representative present that that is not the case. I want to withdraw that statement.

Mr. BERLE. Mr. Clay, who is assistant general counsel of the R. F. C., in connection with my suggestion that we ought to have the R. F. C. loaning authority in connection with the reorganizations, has handed to me the statement of the R. F. C. in connection with the proposed provisions of that act. I suppose it is all right to place that in the record here?

The CHAIRMAN. Surely.

Mr. BERLE. This is not on my authority, I hasten to say, but on the authority of the R. F. C.

I should likewise like to place in the record the text of the Chandler Act with the indicated amendments. Perhaps all my testimony is not clear on that point, so the draft will serve to correct the record.

The CHAIRMAN. I shall ask that the letter of May 9, 1939, from the Securities and Exchange Commission be made a part of the record.

(The documents referred to are as follows:)

[H. R. 5407, 76th Cong., 1st sess.]

[Omit the part in black brackets and insert the part printed in italics]

AN ACT To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States", as amended, is hereby further amended by adding thereto a new chapter *for the relief of debtor railroads*, to be designated chapter XV, and to read as follows:

"CHAPTER XV—RAILROAD ADJUSTMENTS

"ARTICLE I—JURISDICTION

"SEC. 700. In addition to the jurisdiction otherwise excercised, courts of bankruptcy shall exercise original jurisdiction, as provided in this chapter, for postponements or modifications of debt, interest, rent, and maturities or for modifications of the securities or capital structures of railroads.

"ARTICLE II—DEFINITIONS

"SEC. 705. The following terms, as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

"(1) 'Petitioner' means any carrier as defined in section 20a of the Interstate Commerce Act[, including any corporation in equity receivership,] petitioning for, a plan of adjustment, as hereinafter defined.

"(2) 'Claims' includes debts, whether liquidated or unliquidated, certificates of deposits of securities (other than stock and option warrants to subscribe to stock), including demands and obligations of whatever character made, assumed or guaranteed by the petitioner.

"(3) 'Debt' shall be considered to include all claims held or owned by 'creditors' as hereinafter defined.

"(4) 'Creditors' shall include all holders of claims, demands, and obligations of whatever character against the petitioner or its property, whether or not such claims would otherwise constitute provable claims in bankruptcy including the holders of claims made, assumed, or guaranteed by the petitioner.

"(5) 'Securities' shall include those defined in section 20a of the Interstate Commerce Act, as amended, and also certificates of deposit and all other evidences of ownership of or interest in securities.

"(6) 'Commission' refers to the Interstate Commerce Commission.

"(7) 'Adjustment' shall include postponements or modifications of debt, interests, rent, and maturities and modifications of the securities or capital structures.

"SEC. 706. No creditor shall be deemed to be 'affected' by any plan unless such plan proposes a modification of the evidence of debt or other instrument defining the rights of such creditor, or a modification of the security, if any, for the claim of such creditor.

"ARTICLE III—PETITION AND POWERS OF COURT

"SEC. 710. Any railroad corporation not *in equity receivership nor* in process of reorganization under section 77 of the Bankruptcy Act which, before [or after the effective date of this chapter] *May 1, 1939*, shall have—

"(1) Prepared a plan of adjustment and secured assurances satisfactory to the Commission of the acceptance of such plan from creditors holding at least 25 per centum of the aggregate amount of the claims affected by said plan of adjustment, and

"(2) Thereafter obtained an order of the Commission, under section 20a of the Interstate Commerce Act, authorizing the issuance or modification of securities as proposed by such plan of adjustment (other than securities held by, or to be issued to, Reconstruction Finance Corporation), such order of the Commission to include also a specific finding that such [proposed issuance or modification of securities] *plan*, is in the public interest, is consistent with the continuance by the railroad corporation of service to the public as a common carrier, and will not impair its ability to perform such service, and

"(3) Secured assents to such plan of adjustment by creditors holding more than two-thirds of the aggregate amount of the claims affected by said plan, which two-thirds shall include at least a majority of the aggregate amount of the claim of each affected class,

may file in the United States district court in whose territorial jurisdiction such railroad corporation has had its principal executive or principal operating office during the preceding six months or a greater period thereof, its petition averring that it is unable to meet its debts, matured or about to mature, and desires to carry out the plan of adjustment.

"If a receiver of such railroad corporation has been appointed *since May 1, 1939* by a court of the United States and is in office, such petition shall be filed in the court having primary jurisdiction in such receivership proceeding.

"A copy of the order obtained from the Commission, as above provided, shall be filed with the petition and made a part thereof.

"SEC. 711. Any corporation which has complied with subparagraphs (1), (2), and (3) of the first sentence of section 710, and in which corporation the majority of the capital stock having power to vote for the election of directors is owned, directly or indirectly through an intervening medium by any railroad corporation which has filed a petition hereunder, or any corporation which is a lessor of the petitioning corporation and which has complied with the aforesaid subparagraphs (1), (2), and (3) of section 710, may file its petition in the same court in which the petition first aforesaid shall have been filed, and such petitions shall be heard and disposed of in a single proceeding.

"SEC. 712. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other sections of this Act, or any other Act.

"SEC. 713. Immediately following the filing of the petition, there shall be convened a special court of three judges in the manner provided by section 266, as amended, of the Judicial Code, and thereafter all proceedings relative to such plan or any modification thereof shall be conducted before such court. Such three-judge court shall be vested with and shall exercise all the powers of a district court sitting in equity and all the powers as a court of bankruptcy necessary to carry out the intent and provisions of this chapter, including the classification of claims at such time and in such manner as the court may direct.

"SEC. 714. The special court, after hearing, promptly shall enter an order approving the petition as properly filed under this section if satisfied that such petition complies with this section and has been filed in good faith, or dismissing such petition if not so satisfied.

"SEC. 715. If the petition is approved by the special court, the said court, during the pendency of the proceedings under this chapter, shall have exclusive jurisdiction of the petitioner and of its property wherever located to the extent which may be necessary to protect the same against any action which might be inconsistent with said plan of adjustment or might interfere with the effective execution



of said plan if approved by the court, or otherwise inconsistent with or contrary to the purposes and provisions of this chapter[: *Provided, however*, That nothing herein contained shall be construed to authorize the court to appoint any trustee or receiver for said properties or any part thereof, or otherwise take possession of such properties or control the operation or administration thereof].

"ARTICLE IV—HEARINGS

"SEC. 720. The special court shall fix a date for a hearing to be held promptly after the filing of the petition and notice of such hearing or hearings shall be given to all creditors affected by the plan in such manner as the court shall direct. In such proceeding, the court may allow such interventions of parties in interest as it may deem just and proper, but any holder of securities of the petitioner shall have the right to present evidence and be heard thereon, in person or by attorney, with or without intervention.

"SEC. 721. After such hearing, the special court may approve the plan as filed or modify such plan and approve the same as so modified. If the court shall modify the plan in a manner which the court shall find substantially or adversely affects the interests of any class or classes of creditors, such plan shall be resubmitted, in such manner as the court may direct, to those creditors affected by such modification and shall not be finally approved until after reasonable time, fixed by the court, is allowed for said creditors to be heard thereon.

"SEC. 722. If the United States, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of whic is owned by the United States, is a creditor or stockholder, the Secretary of the Treasury is hereby authorized to act in respect of the interests or claims of the United States or of such agency or other corporation. If in any proceeding under this chapter the United States is a creditor on claims for taxes or customs duties (whether or not the United States has any other interest in or claim against the debtor as creditor or stockholder), no plan shall be approved by the court if it provides for the payment of less than the full amount of such claim or provides for any postponement of such payment unless the Secretary of the Treasury shall certify to the court his willingness to accept a lesser amount or agrees to such postponement.

"ARTICLE V—PROCEEDINGS SUBSEQUENT TO APPROVAL OF PETITION

"SEC. 725. If the special court shall be satisfied—

"(1) That, at the time of the filing of said petition as provided in article III hereof, the proposed plan of adjustment had been assented to by not less than two-thirds of the aggregate amount of all claims of the petitioner affected by such plan, including at least a majority of the aggregate amount of claims of each such class;

"(2) That the plan of adjustment as submitted or as modified by the court has been accepted as submitted or as modified by or on behalf of creditors affected by such plan holding more than [three-fourths] *two-thirds* of the aggregate amount of the claims affected by said plan, including at least [three-fifths] *a majority* of the aggregate amount of the claims of each affected class;

"(3) That the plan is [fair and equitable, is in the public interest, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; and] *an equitable composition;*

"(4) That all corporate action required to authorize the issuance or modification of securities pursuant to such plan shall have been duly taken;

"*(5) That the amounts to be paid by the petitioner or petitioners, for expenses and fees incurred in connection with the proceedings or plan, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, pursuant to section 77 of the Bankruptcy Act, and are within such maximum limits to be subject to the approval of the court.*

Said court shall file an opinion setting forth its conclusions and the reasons therefor and shall enter a decree approving and confirming such plan and the adjustment provided thereby, which decree shall be binding upon the petitioner and upon all creditors and security holders of the petitioner; and thereafter the petitioner shall have full power and authority to and shall put into effect and carry out the plan

and the orders of the special court relative thereto and issue the securities provided by the plan without further reference to or authority from the Commission or any other authority, State or Federal, and the rights of all creditors and security holders with respect to claims and securities affected by the plan shall be those provided by the plan as so approved and confirmed: *Provided, however*, That the title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the petitioner, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this chapter.

"The plan of adjustment may contain appropriate provisions whereby the interests of creditors affected by the plan shall be safeguarded in all matters of the petitioner's financial policy and operations.

"SEC. 726. After the special court shall have approved as properly filed a petition pursuant to article III hereof, the special court, from time to time during the pendency of the proceedings hereunder, may enjoin the institution of, or stay, any action or proceeding to enforce any right against the petitioner or its property based upon claims affected by the proposed plan of adjustment in any court, State or Federal, whether for the enforcement of any such claim or for the appointment of receivers in equity or of the institution or prosecution of a proceeding under section 77 of the Bankruptcy Act or otherwise: *Provided, however*, That no such stay shall affect any proceeding to enforce any claim which would be required to be paid if the plan of adjustment proposed by the petitioner were then in effect.

"SEC. 727. Unless the plan of adjustment as submitted or as modified shall have been confirmed by the special court within one year from the date of filing the petition, the proceedings shall be dismissed unless, for good cause shown, on motion of any party in interest the court shall determine otherwise.

"SEC. 728. Without prejudice to existing rights of all creditors, including those affected by the plan, and as a condition to the approval of any plan by the special court, the petitioner, from and after the filing of the petition with the court and until the making of a final order by the special court approving a plan or dismissing the petition, shall continue to make or tender payment to all creditors affected by the plan of sums currently payable to such creditors equal to the amounts proposed to be paid to such creditors under the plan. If, from and after the filing of the petition with the special court, there shall be any failure to make or tender such payments, the special court, unless there is good cause shown for the failure, shall dismiss the proceedings. In finally approving any plan, the court may make or require to be made such adjustments with respect to said payments or any of them as may be necessary to make the same conform to the provisions of said plan as finally approved.

"SEC. 729. In providing for any such payments the petitioner may require any bond or other security, including interest coupons affected by such payments to be presented to or deposited with a paying agent or depositary named by the petitioner for appropriate stamping to show the amounts [and circumstances] of such payment.

"ARTICLE IV—TAX PROVISIONS

"SEC. 735. The provisions of Sections 1801, 1802, 3481, and 3482 of the Internal Revenue Code and any amendments thereto, unless specifically providing to the contrary shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any plan of adjustment confirmed under the provisions of this chapter. No income, gain, or profit taxable under any law of the United States or of any State, now in force or hereafter enacted, shall in respect to the adjustment of the indebtedness of any petitioner in a proceeding under this chapter be deemed to have accrued to or to have been realized by such petitioner by reason of a modification of or cancelation in whole or in part of any of the indebtedness of the petitioner affected by a proceeding under this chapter.

"SEC. 736. In addition to the notices elsewhere expressly provided, the clerk of the court in which any proceedings under this chapter are pending shall forthwith transmit to the Secretary of the Treasury copies of—

"(1) Every petition filed under this chapter;

"(2) The orders approving or dismissing petitions;

"(3) The orders approving plans as filed or as modified, together with copies of such plans as approved;

"(4) The decrees approving and confirming plans and the adjustments provided thereby, together with copies of such plans as approved;

"(5) The injunctions or other orders made under section 726 of this chapter;

"(6) The orders dismissing proceedings under this chapter; and



"(7) Such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct to be transmitted to him.

"SEC. 737. Any order fixing the time for confirming a plan which affects claims or stock of the United States shall include a notice of not less than thirty days to the Secretary of the Treasury.

"ARTICLE VII—INTERSTATE COMMERCE COMMISSION

"SEC. 740. If, in any application filed with the Commission pursuant to section 20a of the Interstate Commerce Act for authority to issue or modify securities, the applicant shall allege that the purpose in making such application is to enable it to file a petition under the provisions of this chapter, the Commission shall take final action on such application as promptly as possible, and in any event within one hundred and twenty days after the filing of such application.

"ARTICLE VIII—FINAL DECREE AND REVIEW

"SEC. 745. Any final order or decree of the special court may be reviewed by the Supreme Court of the United States upon application for certiorari made within thirty days after the entry of such order or decree, pursuant to the provisions of the Federal Judicial Code.

"SEC. 746. In the decree approving and confirming the plan the court may require such reports of the action taken by the petitioner thereunder in the execution of the plan as may be necessary to a final disposition of the cause, and in its final decree disposing of the cause the court shall retain jurisdiction in the district court to the extent necessary to protect and enforce the rights of the parties under said plan and the orders of the Court thereon.

"ARTICLE IX—SAVING CLAUSE

"SEC. 750. If any provision of this chapter, or the application thereof to any railroad corporation or circumstances, is held invalid, the remainder of this chapter, or application of such provisions to other railroad corporations or circumstances, shall not be affected thereby.

"ARTICLE X—TERMINATION OF JURISDICTION

"SEC. 755. The jurisdiction conferred upon any court by this chapter shall not be exercised by such court after five years from the effective date of this chapter[, except in respect of any proceeding initiated by filing a petition under section 710 hereof on or before the termination of such five-year period]."

Passed the House of Representatives April 17, 1939.

Attest: SOUTH TRIMBLE, *Clerk.*

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SECURITIES AND EXCHANGE COMMISSION,
*May 9, 1939.*

Hon. BURTON K. WHEELER,
*Chairman, Committee on Interstate Commerce,*
*United States Senate, Washington, D. C.*

MY DEAR SENATOR WHEELER: I beg to acknowledge receipt of your letter of May 1, addressed to the Commission, enclosing a copy of H. R. 5407, and requesting our views concerning this proposed legislation.

As you have stated, the provisions of this bill do not directly relate to companies within this Commission's jurisdiction in the matter of corporate reorganizations; however, we are charged with duties relating to reorganizations under the Holding Company Act of 1935, and under chapter X of the Bankruptcy Act, as amended. It is of course true, as you point out, that most of the principles pertaining to the reorganization of corporations have equal application generally. We therefore undertake to compare, as you request, the provisions of the proposed H. R. 5407 and the reorganization principles which this Commission in recent reports [1] has recommended to the Congress and which are substantially reflected in the provisions of chapter X of the Bankruptcy Act, as amended in 1938. The reports referred to were made pursuant to the direction of the Congress and are the result of studies and hearings conducted by this Commission over a period of years under the supervision of William O. Douglas.

[1] Reports on the Study and Investigation of the Work, Activities, Personnel, and Functions of Protective and Reorganization Committees, pursuant to section 211 of the Securities Exchange Act of 1934.

H. R. 5407 deals with railroad "adjustments." The latter word, as defined, appears to mean the same as reorganizations, and at least one proponent of the bill has indicated that it is intended to encompass not only moratoria on debt but thoroughgoing reorganization with capital and debt structure "permanently readjusted" (House hearings, p. 87). The bill, as a further matter, is not concerned with purely "voluntary" reorganizations, by which is usually meant reorganizations accomplished without the aid of a court. Instead, it would be an integral part of the proposed procedure under H. R. 5407 that resort be had to the courts.

It is proposed, however, to restrict the customary jurisdiction of the courts severely. Among other things, the bill provides that only the debtor can initiate an "adjustment" proceeding and it limits the scope of the proceeding to consideration of the plan proposed by the debtor. The court is presumably given power to modify the plan only so far as it affects the rights of creditors (sec. 721). As a consequence, the management, which presumably represents the stockholders, may deal with them in the plan as it wishes, if it deals with them at all, and the court is limited either to approval of such provisions or to frustration of the proceeding. In substance, the effect of the bill appears to be to limit the courts to approving and confirming so-called "voluntary" or management plans.

## I

It was not uncommon to find the attempt made to utilize similar procedures under the equity machinery which formerly prevailed. This Commission, after consideration of these devices, commented upon them as follows in its recent report to the Congress (p. I, pp. 313–314):

"* * * occasionally a receivership has been employed which outwardly had the same general features of the more customary conservation receivership but which functionally operated quite differently. This was the so-called 'short receivership.' It had as its sole objective the use of judicial machinery to consummate a plan substantially completed before the proceedings were instituted. Such a plan would have previously been submitted to security holders by the management or the bankers as a so-called 'voluntary' plan. If assents of 100 percent of the security holders were obtained, obviously no recourse to receivership would be necessary. But if the assents of less than 100 percent of the security holders were obtained, the management might experience difficulty and embarassment in consummating the plan. In the first place, the holders of bonds, notes, and debentures which did not assent to the substitution of new securities for old securities might have to be paid off in full. Large amounts of cash, which the company might not have or might not be able to spare, would frequently be necessary. Frequently a company would not have available sufficient cash to pay off even 10 percent of a class of security holders. In the second place, even though a company had the cash, it might not want to risk the precedent of treating a recalcitrant minority lavishly, while the vast percentage of the security holders were making substantial sacrifices by assenting to the plan; and when, perhaps, it had impliedly or expressly represented to the assenters that no group of security holders would be treated more favorably than any other group. Hence, by necessity or by preference, the management would sometimes resort to receivership.

"One important aspect of this procedure was the control that the inside group was thereby enabled to exercise over the court's approval of such voluntary plans of reorganization. The plan was presented to the court, as we have stated, with the support of a substantial number of assents already behind it. It was a completed job, subject only to the court's approval and hte consequent binding of the minority. There was little likelihood that the court would disapprove the plan, or would require material alterations in its terms. Indeed, the courts have stated that the support of a large percentage of security holders is indicative of the fairness of a plan.

"But by definition a voluntary plan is the product of the inside group. Its preparation and its submission to the security holders are matters wholly in the hands of the management and its friends. The court will be induced to approve the plan because of a reluctance to upset a job subsantially completed. But there will have been no supervision or control over the negotiation or promulgation of the plan or over the methods of obtaining assents to it. The dominant position of the management which proposed and sponsored the plan will have precluded the possibility of effective independent representation of the security holders in its preparation. And the management frequently will be found to have engaged in inequitable practices in obtaining assents to the plan.



"The control of the management is complete. The proceedings are wholly free from judicial or administrative supervision. Often no committees are formed for the security holders. Such committees as may be set up are generally intended as little more than 'fronts' for the management and the bankers. There is little opportunity, such as may be had in court proceedings, for investigation or criticism of the plan or for the organization of opposition groups.

"In effect, where the receivership proceedings have been preceded by the submission of a voluntary plan, the reorganization process is largely free from any judicial supervision. The machinery of the law is reduced to convenient mechanics for effectuating the plan of the management and its bankers."

These conclusions appear to us to be aptly descriptive of what is likely to be the result of legislation of the type represented by H. R. 5407; a result which we could not regard as consistent with the principles of a sound reorganization procedure.

## II

With respect to more particular aspects of the proposed bill, its most striking feature is that it not merely permits, but expressly encourages, the long-criticized practice of soliciting acceptances of security holders to a reorganization plan before such plan has been scrutinized by the court and before the court has authorized its submission to security holders. This seems to us out of harmony with sound principles in several ways.

It could not be expected that under such a program effective opposition could be organized by security holders to management plans proposed under the terms of H. R. 5407. The bill contains no machinery for making accessible security holders lists and other information which is vital to such organization. In the absence of such provisions, the situation remains as we have described it in our report (pt. I, p. 411):

"As the law and practice developed, possession of, or access to, these lists was almost exclusively in the hands of the banker and management group. The practical monopoly which they have enjoyed in these respects has been a major basis for their ability to dominate and control committees and hence the entire reorganization * * *."

The most significant, and seriously detrimental, aspect of this practice of soliciting acceptances before the plans are submitted to the court, related to the court's consideration of the fairness of such reorganization plans. On this the Commission's recommendations to the Congress stated (p. 900):

"Acceptances of a plan (conditional or unconditional, preliminary or final) should not be solicited until the plan has been carefully scrutinized by the court and its submission to the creditors and stockholders authorized. This is essential for the following reasons. In judicial reorganizations, scrutiny of plans of reorganization is the responsibility of the court. But adequate performance of this duty by the court has been inhibited by the practices of reorganizers. There must be removed the indefensible pressure upon the court which reorganizers are able to exert by confronting it with assents to a plan obtained from security holders prior to any review of the fairness and equity of the plan but who have been induced to give conditional approval to a plan in advance of its formulation, or to endorse the general activities of a committee or group by sending them blanket or broad proxies, or by depositing their securities with them. Under the system which has prevailed that practice has tended to shift the attention and emphasis of the court from the merits of particular plans of reorganization to the ostensible backing which various proponents have. Renewed emphasis on the fairness, equity, and soundness of plans necessitates removal of the undue and unwarranted pressure which those first in the field may exert by reason of their ostensible representation of substantial groups of security holders. Such representation by and large is not real. It should no longer be used to detract attention from the fundamental and basic problem of the fairness, equity, and soundness of the plan."

The proposed bill expressly sanctions the practice criticized in the recommendation last quoted, which practice, without judicial approval, was specifically prohibited by the Congress in section 176 of chapter X of the Bankruptcy Act, as amended.

## III

In passing we referred earlier to the limitations which the proposed bill would place on the jurisdiction which courts have traditionally exercised in equity receiverships and hitherto in reorganization proceedings under the Bankruptcy Act. It is expressly provided in H. R. 5407, "That nothing herein contained shall be

construed to authorize the court to appoint any trustee or receiver for said properties or any part thereof, or otherwise take possession of such properties or control the operation or administration thereof." (Sec. 715.)

We do not believe it is appropriately within our province to consider the legality of such limitations on the court's jurisdiction. However, it should be pointed out that one effect of the absence of the traditional supervision by the court over the administration of the property is to deprive the court of even the measure of familiarity with the problems of the corporation which the court was able to obtain in the often critized equity receivership.

Perhaps the most pressing need by the courts in reorganizations has been for full and unbiased information and advice, and for administrative and expert assistance. Mr. Justice Douglas, then a member of this Commission, discussed the matter as follows before the House Judiciary Committee, in testimony supporting the enactment of the present chapter X of the Bankruptcy Act (H. Rept. No. 1409, 75th Cong., 1st sess., p. 38):

"With this system in operation, the courts could do very little. They could offer investors and creditors little protection. They were crippled by a reorganization system which was based upon the theory that reorganization was a procedure wherein the legal matters were left to the court; the business matters to the reorganizers. Obviously, reorganization is not strictly a legal problem. It is a business and administrative matter of great complexity. And even though the courts wanted to exercise a broader conditioning influence over the whole process, they frequently were in no position to do so, since they did not have nor were they in a position to get the facts. The bill (chapter X) recognizes this weakness in the system. It makes it necessary for the courts to deal with the business and administrative problems of reorganization. It makes it possible for the courts to do so by giving them administrative and expert assistance. In that way it vitalizes the role of the courts. In a variety of ways, it brings the court into association with the facts of the business; it assures that the court will be fully informed; it places in the court power to give impetus to a reorganization—to see that a plan is drafted and that moves are made to get the support of investors; and it gives the court genuine power to see to it that the reorganized company is provided with good management and sound capital structure. In the public eye, the courts already have the responsibility; what the courts need are ample powers commensurate with their actual or ostensible responsibility. * * * "

In the absence of such safeguards, it would follow, we believe, that the basic reorganizations functions would go by default, for as we stated in our report (pt. I, pp. 309–310):

"In terms of the fairness of reorganization plans, an adequate investigation in these cases is the first and essential requisite. Until such investigation has been made, the fairness of a plan of reorganization cannot be determined. Until the various parties in interest are in a position to know what assets may be collected, they cannot pass intelligently on the merits of a particular plan of reorganization. Furthermore, the plan will commonly provide a management for the new company or supply the machinery whereby that management may be selected. Investigation of the old management may frequently be necessary to determine whether it should be once more entrusted with the stewardship of the company. A plan, otherwise fair, may be rendered unfair and inequitable if a faithless or incompetent management is restored to power. Accordingly, an investigation occupies a foremost place in any system of control over fairness of plans. The conclusion is irresistable, therefore, that the reorganization system should be designed so that such investigation will be made as a matter of course."

The functions to which we have made reference are indispensable to any proper reorganization procedure. They can perhaps be accomplished in a number of ways; but the important thing is our view is that they be accomplished. They do not appear to be adequately provided for, if at all, in H. R. 507.

## IV

Unquestionably, the accomplishment of sound financial structures is a primary purpose of reorganizations. It may appropriately be indicated in this connection that the proposed legislation does not in terms require that either the court or the Interstate Commerce Commission be satisfied that a plan submitted under H. R. 5407 meets this requirement. We are not confident that the findings which are required to be made adequately furnish a substitute. It seems to us that this matter is of such importance that it should be placed beyond question.



## V

It is evident from this brief description that the proposed legislation is a marked departure from all prior legislation of the Congress on the subject of corporate reorganization. It may be noted in this connection that as recently as last year the Congress concluded that section 77B of the Bankruptcy Act contained insufficient safeguards to insure fair and feasible corporate reorganizations, and substituted the present chapter X of the Bankruptcy Act to overcome these deficiencies. This Commission strongly favored the enactment of chapter X. Since H. R. 5407 in essence omits even those safeguards which were contained in section 77B, we must regard it as wholly inconsistent with reorganization principles which this Commission has advocated.

The sum total of these omissions appears to us to result in a procedure concerning which the following comment in our report is presently pertinent (part I, pp. 328–329):

"We develop in another part of this report the various features of voluntary plans which make it essential that a pervasive system of control be provided for them. It is sufficient at this point to emphasize that proponents of voluntary debt readjustments should not be permitted to have the imprimatur of Federal courts placed on their plans so easily and so expeditiously. If the present system is allowed to continue it means that legal sanction will be afforded to practices and procedures which the conscience of the chancellor should never tolerate."

It is requested in your letter that we state whether or not it is our recommendation that H. R. 5407 should be enacted. It is our recommendation that it should not be enacted. We do not believe that improvement in reorganization procedure lies in the direction taken by the provisions of this measure.

Very sincerely yours,

(s) ROBERT E. HEALY,
*Acting Chairman.*

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### MATTER SUBMITTED ON BEHALF OF RECONSTRUCTION FINANCE CORPORATION

Section 401 (b) of H. R. 2531 contains a provision to accord obligations to the Reconstruction Finance Corporation in bankruptcy proceedings, a position with respect to realization on collateral similar to that now given to equipment obligations. This provision is retained in the redraft of section 401 suggested by Reconstruction Finance Corporation..

The provision carries out a recommendation made by the committee of three Interstate Commerce Commissioners in their report to the President of March 24, 1938, which stated at page 31:

"Possible realization on some Reconstruction Finance Corporation loans has been impeded or perhaps prevented by injunctions issued by the courts in charge of the properties. This, of course, renders the collateral less desirable and makes loans initially more difficult to justify as adequately secured. Your committee suggest that obligations to the Reconstruction Finance Corporation, in bankruptcy proceedings, be accorded a position in this regard similar to that now given to equipment obligations."

In the last session of Congress both the Senate and House Banking and Currency Committees reported favorably a bill to amend the Reconstruction Finance Corporation Act containing substantially the same provision. The Senate committee in this connection said:

"Provisions are also contained in the bill to place railroad obligations, in the financing of which the Reconstruction Finance Corporation has aided, or loans which have been made by the Reconstruction Finance Corporation, in a position, in bankruptcy proceedings, similar to that now given by the Bankruptcy Act to equipment trust obligations. This is likewise in accordance with the recommendations of the committee of the Interstate Commerce Commission Commissioners to the President, which stated in its report that unless this were done collateral offered would be rendered less desirable and the loans made initially more difficult to justify as adequately secured."

(Senate Report No. 1726, 75th Cong., 3d sess.)

The report of the House Banking and Currency Committee said:

"The bulk of the loans made by the Reconstruction Finance Corporation to roads which, after the disbursement of the loans, filed petitions under section 77 of the Bankruptcy Act, as amended, were made by the Corporation prior to March 3, 1933, the effective date of that law. None of such loans were made after the decision of the Supreme Court on April 1, 1935, in *Continental Illinois Bank & Trust Co.* v. *C. R. I. & P. Ry. Co.* (294 U. S. 648), which permitted a temporary injunction. All of such loans benefited the security holders of the roads concerned,

since they were used principally to pay interest and maturing obligations, and taxes, rents, and other fixed charges. A substantial part of the proceeds was used to 'bail' out, in whole or in part, commercial banks. The committee is of the opinion that in the circumstances, it is fair and equitable that, as respects such loans, as well as other railroad loans heretofore or hereafter made by the Corporation, the Corporation should be exempt from being enjoined by the courts in bankruptcy proceedings from acquiring title to the collateral securing the loans in compliance with the terms of the pledge of such collateral. All railroad loans which have been made by the Corporation have been made to borrowers who could not obtain loans on reasonable terms from any other source. The provisions of the bill are designed, among other things, to effect this purpose."

(House Report No. 2351, 75th Cong., 3d sess.)

Neither of the bills in question came to a vote on the floor.

The recommendation has been renewed by Mr. Eastman, chairman of the legislative committee, Interstate Commerce Commission, in his letter dated March 20, 1939, to this committee. (See pp. 28–29, 32 of letter dated Mar. 20, 1939, to this committee.) After the favorable action on the matter by the Senate and House Banking and Currency Committees last spring, Congress enacted into law a similar provision with respect to loans made by the Maritime Commission. (See sec. 703, Public Act No. 696, 75th Cong., approved June 22, 1938 (the so-called Chandler bankruptcy bill).) It is worthy of mention that the provision with respect to loans of the Maritime Commission is contained in a law which was considered by the Senate and House Judiciary Committees.

As a matter of principle, there is no more reason why loans made by the Reconstruction Finance Corporation to railroads should not have corresponding status with loans made by the Maritime Commission. The prime consideration in both cases is safety of the public funds.

We set out below a memorandum, in support of our position, which was furnished to the House Banking and Currency Committee and appears at pages 89–91 of the record of the hearings before that committee on H. R. 10608 (the bill which was reported favorably by that committee on May 12, 1938):

"STATEMENT IN SUPPORT OF H. R. 10505 FILED WITH THE HOUSE COMMITTEE ON BANKING AND CURRENCY BY THE RECONSTRUCTION FINANCE CORPORATION

"Yesterday this committee correctly stated the issues regarding the proposed provision as being whether it is in the public interest and whether it should apply to loans heretofore made by Reconstruction Finance Corporation. This statement is presented for the convenience of this committee in an endeavor to assist in clarifying these issues.

"First: The provision is in accordance with the recent recommendations of the Committee of the Interstate Commerce Commission Commissioners to the President.

"Second: It protects public funds that were advanced as rescue money when private lenders did not act.

"The bulk of Reconstruction Finance Corporation loans involved in section 77 proceedings were made before section 77 became law and before the Rock Island decision alluded to. In an endeavor to make maximum funds available the liquidity of these short-term loans was an important element of their value. This element of value should not be impaired and indeed affords far less protection than is afforded other public moneys in bankruptcy where by statute they receive priority.

"It should be sufficient here to state that interest accrued and owing to Reconstruction Finance Corporation by railroad borrowers now involved in proceedings under section 77 amounts to approximately $19,600,000, whereas the decline in collateral value over the period during which injunctions have been in force is graphically illustrated by the table which has been introduced at this hearing and which deals with these items of collateral behind the Rock Island loan that are listed on the New York Stock Exchange.

"Third: The provision restores to full effect the portions of the Government contracts that were authorized by statute and that have since been stayed by the moratorium. Accordingly, the will of Congress is merely being reaffirmed.

"Fourth: The provision does no more for public funds than is done at present for the private holders of equipment-trust certificates under existing provisions of section 77.

"Fifth: To say that reorganization will be rendered impossible ignores the realities of the case.

"Equipment-trust certificates are exempt from injunctions under the present provisions of section 77; yet this has caused no delay.



"Furthermore, in equity receiverships, where injunctive power was lacking, reorganizations were consummated without difficulty.

"Finally, the only effect of the proposed provision will be in the treatment afforded Reconstruction in the reorganization plan. The Corporation has no present intention of selling collateral and as a Government agency can be relied on to do so only if it is in the public interest. Proceedings that are most advanced are only before the Interstate Commerce Commission for approval of a plan. There the Corporation insists that its public funds should be afforded treatment according to their liquid value, whereas other interests under the subsequent section 77 have obtained injunctions in violation of the limitations imposed by the Rock Island decision and have sought to use them to lower the Corporation's collateral value. Therefore, the proposed bill will prevent long-drawn-out litigation over injunctions, will expedite reorganizations, and will give public moneys the legal protection in reliance on which they were expended.

"Sixth: The injunctions now in force against Reconstruction Finance Corporation are in disregard of the limitations imposed by the Rock Island decision itself. This is slowly being recognized in the appellate courts—see the Prudence decision in which Messrs. Root, Clark, Buckner & Ballantine as counsel for Reconstruction Finance Corporation succeeded in vacating an injunction against the sale of collateral. That slow process of lifting injunctions by appeal will merely delay reorganizations in these difficult times. Emergency legislation instead is needed.

"It should be noted that in the Rock Island and the Prudence decisions the courts stressed that injunctions might continue for reasonable periods only, regardless of whether reorganization was consummated by that time or not. In the Rock Island decision the court said that the period would have been too long had it not been for the litigation then before it. At that time 1 year and 4 months had elapsed. Since then 3 more years have elapsed and the injunction is still in force.

"Seventh: The proposed provision is not retroactive.

"If it should be made not to apply to loans heretofore made, public moneys would have no protection in future bankruptcies.

"Furthermore, in existing bankruptcies it can concern itself solely with future injunctions and the continuation of injunctions. It is no more retroactive than was section 77 with respect to pending equity receiverships.

"Finally, the proposed bill would make it impossible to make future advances on existing collateral which might be the only way a particular road could obtain much-needed funds; thus without it the contemplated emergency program would be materially impeded.

"Eighth: As to future loans, with relatively little collateral available for pledge by railroads, the emergency program will be materially impeded if Reconstruction Finance Corporation must, in valuing collateral, attempt to figure what it will be worth if a protracted injunction ensues.

"Ninth: Even when collateral consists in part of obligations of the debtor, as was true in the case of the Rock Island loan, an injunction would be unwarranted. The effect is not, as has been stated, to balloon the debts of the road. That was done when those obligations were issued. Thereafter, as assets of the debtor, Government funds were advanced on their fair value in the public interest. It is then too late to say that the assets cannot be given full effect. It would be grossly inequitable to permit the subsequent enactment of section 77 and the injunctions obtained thereunder to jeopardize public funds by taking away the salability of the assets that they had previously possessed and that was an important element in fixing a value for a Government loan.

Tenth: As of December 31, 1937, of a total of $643,597,795 of loans authorized by the Reconstruction Finance Corporation to railroads, $119,890,352 was loaned for meeting interest requirements, $327,378,691 for meeting bond and equipment-trust maturities and $54,445,126 to meet bank and other short-term loans, and $31,354,291 to meet taxes.

"The figures just mentioned are illuminating, since they illustrate how very greatly, though indirectly, insurance companies and other financial institutions have benefited from the proceeds of Reconstruction Finance Corporation loans to railroads. Some $539,772,767, or nearly five-sixths of the total Reconstruction Finance Corporation authorizations, have been for the purpose of meeting taxes (which come ahead of funded debt), rents, fixed interest and capital requirements. It has been estimated that about one-third of the funded debt of the railroads is owned by insurance companies and mutual savings banks. A large proportion of the Reconstruction Finance Corporation loans to such borrowers accordingly has gone through the medium of the borrowing carriers into the treasuries of insurance companies and mutual savings banks.

"What the objectors in effect ask for is that after having received the benefit of the loans the Reconstruction Finance Corporation, a public agency which made the advances, should be prevented from protecting itself against loss if it becomes necessary to look to its collateral. The amendment is in the public interest to protect public moneys. There is no unfairness or inequity about making it applicable to existing proceedings, since section 77 itself, when it was passed in 1933, was applicable to existing receiverships of railroads, and the amendment of section 77 in 1935, with respect to equipment trusts, applied to equipment trusts involved in then pending section 77 proceedings."

The reasons why such a provision is in the public interest are as strong today as they were nearly a year ago.

As pointed out in the above-quoted memorandum, the provision is not retroactive. Furthermore, since the date of that report no railroad borrower from the Reconstruction Finance Corporation has initiated a section 77 proceeding, so that the statement made in House Report No. 2351 still correctly states the facts, viz:

"The bulk of the loans made by the Reconstruction Finance Corporation to roads which, after the disbursement of the loans, filed petitions under section 77 of the Bankruptcy Act, as amended, were made by the Corporation prior to March 3, 1933, the effective date of that law (sec. 77 of the Bankruptcy Act). None of such loans were made after the decision of the Supreme Court on April 1, 1935, in *Continental Illinois Bank and Trust Company* v. *C. R. I. P. Railway Company* (294 U. S. 648), which permitted a temporary injunction."

SECTION 1. (a) That portion of the third sentence of the third paragraph of section 5 of the Reconstruction Finance Corporation Act, as amended, which precedes the last proviso in such sentence is amended to read as follows:

"The Corporation, with the approval of the Interstate Commerce Commission, may, to aid in the financing, reorganization, reduction or readjustment of principal or interest charges, consolidation, maintenance, or construction thereof, purchase for itself, or for account of a railroad obligated thereon, or of a receiver or trustee of a railroad, the obligations, including equipment trust certificates, of railroads engaged in interstate commerce, whether or not such railroads are involved in receivership or reorganization proceedings, or of receivers or trustees thereof, with such maturities as the Corporation may approve notwithstanding any other provision of law, or guarantee the payment of the principal of, and/or interest on, such obligations, including equipment trust certificates, or, when in the opinion of the Corporation funds for the particular purpose are not available on reasonable terms through private channels, make loans to such railroads or to receivers or trustees thereof with such maturities as aforesaid for the purposes aforesaid: *Provided*, That in every case of such a loan, or purchase or guaranty of obligations, including equipment trust certificates, the Interstate Commerce Commission and the Corporation shall, in connection with the approval and/or authorization thereof find that the prospective earning power of such railroad, together with the character and value of the security offered, furnish, in the opinion of the Interstate Commerce Commission and the Corporation, respectively, reasonable protection to the Corporation.

"The title of any owner, whether as trustee or otherwise, to any property leased or conditionally sold to a railroad, or a receiver or trustee thereof, which the Corporation has financed, or in the financing of which the Corporation has aided, any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sales contract, and the title of any owner of a collateral note evidencing a loan to a railroad, or a receiver or trustee thereof, from the Corporation heretofore or hereafter made by the Corporation and the right of any such owner to acquire title to the collateral securing such note, free and clear of any equity of redemption, in compliance with the contract of pledge, and thereafter to deal with the same as the absolute owner thereof, shall not be affected, restricted, or restrained by or pursuant to the provisions of the act of July 1, 1898, entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' as amended, or by or pursuant to any other provision of law applicable to any proceedings thereunder."

(b) Section 3 of the act approved January 31, 1935 (49 Stat., c. 2, pp. 1–2), is hereby amended by deleting from the first sentence thereof the words "January 31, 1945" and inserting in lieu thereof the words "January 31, 1955."

The CHAIRMAN. The committee will now stand adjourned until tomorrow morning at 10:30 o'clock in this room.

(At 4:15 p. m., an adjournment was taken until Thursday, May 11, 1939, at 10:30 a. m.)

# TO AMEND THE BANKRUPTCY ACT

**THURSDAY, MAY 11, 1939**

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
*Washington, D. C.*

The committee met, pursuant to adjournment on yesterday, at 10:30 a. m., in the Capitol, Senator Charles W. Tobey presiding.

Present: Senators Tobey (presiding), Minton, Neely, and Schwartz.

Senator TOBEY (presiding). The committee will come to order. In the absence of Chairman Wheeler, who has been detained but will be here a little later on, and until we have the presence of Senator Minton, I will open the hearing and ask Mr. Walter to testify first.

## STATEMENT OF LUTHER M. WALTER, COUNCIL FOR THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE, CHICAGO. ILL.

Mr. WALTER. My name is Luther M. Walter. I am appearing here as counsel for the National Industrial Traffic League, which is an organization national in scope and whose members are boards of trade, chambers of commerce, and large shippers. For instance, the Boston Chamber of Commerce is a member, and Mr. Day is chairman of the executive committee.

At the meeting of the league in Washington last February it unanimously endorsed the provisions of this bill as it then existed in the House. I was charged to come here and ask you to approve it.

I think there is little if anything more for me to say. The provisions of the bill have been stated before you. The reasons which actuated the members of the league in endorsing it are that it permits railroads to agree with their creditors and to extend their debts without wiping out the interests of stockholders. We believe it will encourage the financing of railroads by the sale of stock if a bill of this kind is approved. Stockholders, present and future, will not be so frightened at the prospects if a railroad can agree with its creditors under a situation like the present, which we hope is only temporary. The provisions of the Baltimore & Ohio plan as approved by the Commission are, as we think, eminently just.

I think that is all I have to say.

Senator TOBEY. You were here yesterday?

Mr. WALTER. Yes, sir; I was here yesterday and I heard the testimony given.

Senator TOBEY. What do you say as to Mr. Berle's testimoney?

Mr. WALTER. I did not agree with Mr. Berle. I could not debate with him, who is a much abler man than I am, but I will say that I am not suspicious of the provisions of the bill. I think they can be enforced, and the reason I say that is that of the roads now in trustee-

ship there is a mileage of better than 50,000, and I think the total of operated mileage in receivership and trusteeship is around 77,000 miles. Now, of that mileage I think some fifty-odd thousand are in trusteeships. The Commission has handed down its plan in 11 cases; examiners have reported in 8 cases. They make a total of 19 cases. Then there are 3 roads that have had their hearings completed, being the Erie, the Frisco and the Rock Island, and the proposed reports will soon be out.

If you take the mileage of the 22 railroads I have referred to, with reports of 11 by the Commission, and 8 by examiners, and 3 awaiting reports, you have something like 80 percent of the total mileage now in trusteeship. In the case of the Commission's reports and the examiners' reports, they cut the indebtedness in the case of the 19 roads by over one and one-quarter billion dollars. In other words, they were reduced by 56 percent. So that I think what has been done there will be wholly unaffected, and that it would not be possible a court would allow any one of these cases to be dismissed for them to try to take advantage of this bill. I have no fears of that being brought about.

I think that is all I would say in response to what Mr. Berle had to say.

Senator TOBEY. We thank you.

Mr. WALTER. There is one amendment that I think ought to be called to your attention, and that is as to section 714. The word "section" in lines 12 and 13 ought to be changed to "chapter."

Senator TOBEY. You say section 714 of the bill?

Mr. WALTER. Yes, sir; on page 6, and lines 12 and 13 of this section. I might explain that this provision was taken from section 77, and of course that included all the provisions there are. Am I right about that, Judge Fletcher?

Mr. FLETCHER. Yes; and I hope you will permit me to say that I intended to make that suggestion but overlooked it. I am much obliged to Mr. Walter for making it.

Mr. WALTER. In lines 12 and 13, of section 714, on page 6 of the bill, the word "section" should be changed to the word "chapter," as this is chapter 15 of the Bankruptcy Act.

That is all that I have to say, gentlemen of the committee.

Senator TOBEY. We thank you, Mr. Walter.

Mr. WALTER. I thank you for the opportunity to appear.

Senator TOBEY. We will now hear Mr. Taliaferro.

## STATEMENT OF EUGENE S. TALIAFERRO, WITH FIRM OF JOSEPH WALKER & SONS, NEW YORK CITY

Mr. TALIAFERRO. My name is Eugene S. Taliaferro. I am associated with the firm of Joseph Walker & Sons, New York City. It is a partnership, and a member of the Stock Exchange which has for some 80 years dealt in railroad securities and specialized particularly in matters pertaining to leased line railroads, lessors, and similar matters.

In addition to may association with that firm, I am vice-chairman of the protective committee of shareholders of the Old Colony Railroad. I am vice-president of the Fort Wayne & Jackson Railroad, and the Detroit, Hillsboro & Southwestern Railroad, and am a member of the board of directors of the Patterson & Hudson River Railroad.



During the past 6 or 7 years I have been engaged primarily in matters pertaining to railroads and railroad reorganizations, particularly with regard to problems affecting leased railroads, their securities, and their position in railroad reorganization. I have been permitted to practice before the Interstate Commerce Commission but am not a member of the legal bar.

I desire to suggest certain amendments to this bill for the purpose of clarification, to make it more workable rather than to make any fundamental change. These suggested amendments arise from studying the bill with a view to determining how it would actually work in practice in a number of instances involving lessors.

Now, to present the position of the lessors, I wish to mention as briefly as I may to avoid the possibility that anyone might just think that in speaking of leases and lessors one is talking, you might say, about the chain store, having a lot of such properties around. We are dealing with a problem of great magnitude in the railroad field, and dealing with something that always causes trouble when reorganization comes.

For example, in 1937 lessor railroads whose properties were leased to class I railroads owned 37,290 miles of railroad, with an aggregate investment of these leased properties amounting in that year to $4,161,612,376, and an aggregate capitalization of these companies comprised of funded debt of something over $1,607,000,000, and capital stocks of the par value in excess of $1,457,000,000. In that year the income from the leases of these railroads amounted to over $128,000,000. That establishes I think the importance of the leased roads in the railroad structure.

I hand you some maps that may clarify the leased structure of a number of the more important systems, I think they are clearly set forth there. With that in view I would move as quickly as I can to the suggested amendments.

Senator TOBEY. Senator Minton, will you now take the chair?

Senator MINTON. Oh, no. Senator Tobey, you just continue presiding.

Senator TOBEY. Oh, no. I would prefer that you should preside.

Senator MINTON. Very well. You may proceed, Mr. Taliaferro.

Mr. TALIAFERRO. The suggested amendments are: In section 700, page 2 of the bill, I agree with Judge Fletcher's suggestion, that the word "leases" be inserted after the word "securities" appearing on line 7.

In this connection it is interesting to note that leases are neither securities nor parts of the capital structure of railroads. That is, they are a part of the financial structure, but do not appear on the balance sheet and do not form a part of the funded debt, and yet they are definitely obligations.

As an illustration I might refer to the Lackawanna Railroad. It has no funded debt of its own, although it has fixed charges of around $7,000,000 a year that they have to pay as rental, which of course has its effect on earnings although their capital structure shows no funded debt. I think that is clear on that.

Section 705, paragraph 2: Judge Fletcher suggested an amendment that is the same as my suggestion, with the exception that it might be well—perhaps I had better read the suggested amendment where the wording is not the same as his. My suggestion is to change section

704, subparagraph 2, which is the definition of claims, by adding the words:

In the event that a plan of adjustment contemplates the modification of a railroad lease, and it is necessary to determine the amount of the claim of the holders of stock of the lessor, or of any class thereof, the amount of such claim, for the purpose and within the meaning of this act, shall be assumed to be the par value of such stock at the time outstanding.

Now, there is something that if you do not clarify I can see a lot of trouble arising out of. Suppose you intend to reduce the rent or modify a lease. This bill calls for a determination of the aggregate amount of claims of affected creditors. What is the claim that a lessor has when his lease is in full force and effect and when no money is owing to him? You have not got the question of a claim in bankruptcy, of a defaulted lease, and to work out the difference between the rentable value and the present value of future rent. We are driving here to percentages of affected parties, so for the purpose of this act the amendment I suggest will work. It merely puts it down to where 50 percent of the stockholders of a class of guaranteed stock are in favor of it, then you have 50 percent. That may not be their claim if the railroad goes into receivership, but it is merely an arbitrary assumption of an amount that would be workable.

In section 705, subparagraph 4, I suggest that it be amended by deleting the final period and adding:

and the stockholders of lessor corporations whether or not approvable, direct, contractual relationship exist between them as stockholders and the petitioner.

There is room for a great deal of argument as to whether or not a lessor stockholder is himself a creditor under the definition as it stands, although his corporation, the lessor, obviously is. Of course, where a direct guaranty running from the lessee to the stockholder of the lessor exists, the stockholder is unquestionably a creditor by virtue of that guaranty. His corporation, the lessor, is also a creditor by virtue of the lease. The suggested amendment removes any doubt as to the status of the lessor's stockholders and will eliminate possible controversy when it comes to applying the provisions of this sill. So that is, I think, merely clarifying.

Section 705, subparagraph 7, I suggest the same amendment that I suggested with respect to 700. It should be amended by inserting the word "leases" after the word "securities" which appears on the last line thereof. The reasons for that suggestion have been given.

Section 706 should be amended by deleting the final period and adding:

or a modification of the lease of the property of a railroad corporation of which such creditor is a stockholder in a manner which materially and adversely affects the rights, the equity, the dividends, or the income available therefor, of stock of the lessor of the class held by such creditor: *Provided*, That in the event the plan of adjustment contemplates the modification of a lease and/or the modification of a guaranty or obligation arising therefrom running directly to the stockholders of the lessor, the holders of each affected class of the capital stock of such lessor, other than the lessee or any corporation controlling or controlled by the lessee, either directly or indirectly, shall be treated, in each instance, as a separate and individual class of affected securities.

Here we come into a rather important consideration. In some instances a majority of the stock of lessors is owned by the lessees. We will say under this bill a lessee proposes a plan to modify the lease, or to postpone payment of rental under that lease. As the bill now stands, if a lessee has 60 percent of the stock and votes it and has control of the lessor, of course the lessor corporation naturally accepts, and so you technically have the acceptance of the plan without regard to a minority of stockholders who are affected.



As a matter of fact the modification of a lease by way of postponement of payment of rent, or reduction in payment of rent, makes no difference whatever to the lessee as far as the stock the lessee owns is concerned, because if he does not get any dividends on that stock he does not get anything back of that stock. It is just out of one pocket into the other so far as that stock is concerned. So this provision is put in to give the holders of the lessor's stock, other than the lessee, or the company controlling or controlled by the lessee, an opportunity to be treated in the same way as any other class of bondholders or security owners.

It is merely clarifying. I do not think anything I have suggested is controversial. I think it will save litigation and controversy if this bill should be enacted into law.

That completes my suggestions, with one exception, that I have been told is not necessary but I would like to mention for the purposes of the record. And that is section 725, subparagraph 2. As drafted this amendment, although I am not offering it yet, I would like to discuss the reasons why I at first thought of suggesting it; the suggested amendment that I considered was that section 725, subparagraph 2, should be amended by deleting the final period and adding:

: *Provided*, That in the event the plan of adjustment calls for the modification of the terms or conditions of a lease, which requires corporate action on the part of the lessor, that in addition to the other conditions laid down in this paragraph the special court also must be satisfied that the plan of adjustment as submitted to or as modified by the court has been accepted by a sufficient number of the holders of the voting stock of the lessor, including the lessee and corporations controlling or controlled by the lessee, to make possible the requisite corporate action on the part of the said lessor in accordance with the terms of the lessor's charter and the laws of the State in which the lessor is incorporated.

Now it is true in section 725, subparagraph 4, the statement is made that the court must find—

That all corporate action required to authorize the issuance or modification of securities pursuant to such plan shall have been duly taken.

And Judge Fletcher has suggested that there be inserted after the word "securities" the word "leases."

I am willing to concede that that probably covers this, but I invited attention to the possibility that you might have a conflict between Federal and State authorities if you have a situation where 60 percent of the stockholders of a lessor company agree to modification of a lease which complies with the requirements of this plan, and then the special court declares the plan operative and yet the charter of the lessor corporation or the laws of the State in which the lessor is incorporated requires two-thirds of the stock in order to make effective the modification of the lease.

Now if the committee deems that this subparagraph 4 covers that situation, why, of course, I have nothing to say. I simply wanted to invite attention to something I am not quite satisfied with as to its workability.

That is all I have to suggest. It is merely, as I have said, after studying this bill with particular regard to the troublesome problems that may arise when you come to the modification of lease, I thought

it well to call your attention to the situation. There are a lot of excellent leases, leases that are very profitable to the railroads that hold them, and there are a lot of others that are burdensome, and in reorganizations or in adjustments should be modified, and in case of reorganization some way should be found to get rid of them in an equitable manner and solve the problems attendant thereon.

Senator MINTON. With these suggested amendments, do you favor the passage of the bill?

Mr. TALIAFERRO. I was very much impressed with Mr. Berle's remarks with regard to certain amendments he suggested, other than his amendment limiting it to two companies in one or two respects; but as to the principle of the bill; yes. I think there were several situations where I believe the matter could be worked better this way, and of course after all this bill does put the responsibility or approval of these plans up to security owners in what appears to me to be a perfectly fair way. And there must be a balance, or I would say consideration given to how far one should go in carrying protection to the point of acting for or on behalf of people who own property. It seems to me that in many instances responsibility of ownership has not been recognized as much as it should in the way of causing the owner to take responsibility for decision.

In that respect I think that the recent action of the Securities and Exchange Commission in the handling of proxies, and compelling brokerage firms and others who hold stock in their names but owned by others, to see that proxies get to the owners, has a salutary effect as to taking responsibility with regard to the management of companies. I think it would be a good thing to put up to security owners the problem that they now have a certain responsibility to decide what is going to be done with the bonds or stocks they hold.

Senator TOBEY. I take it that is the idea behind the proposition of the requirement of the Securities and Exchange Commission. But has it in fact increased the consciousness of stockholders in a helpful way, or has it been merely an abstract picture?

Mr. TALIAFERRO. As far as any change in the minds of people in large numbers is concerned, who have had the habit of mind through many years to talk one way but to act more or less carelessly when the time for action comes, I do not know. But there has come to my attention several instances where people have said: "Well, what is this all about?" I think they are beginning to get interested. It may be that in the course of 3 or 4 years you will find more interest taken along this line.

Senator TOBEY. You are setting up the machinery for it.

Mr. TALIAFERRO. You at least open the closed mind. Well, perhaps that is the wrong expression, but at least you arouse interest in what has been done before. And I think there is much to be said for this bill in just that, because there still remains in all these proceedings a tendency on the part of security owners to ask someone else whether they should deposit their bonds or some other security with a certain committee or not, and when the other person advises them then they deposit their securities with the committee and think nothing more about it, hoping they will be completely protected.

Senator TOBEY. Of course it is absolutely impossible for every stockholder of a railroad to understand everything about a reorganization.



Mr. TALIAFERRO. Yes.

Senator TOBEY. And as a rule the stockholder has to trust to somebody else to give advice in regard to that responsibility.

Mr. TALIAFERRO. Yes, sir.

Senator TOBEY. And having done that you just get back to the proposition of accepting what is thought to be and hoped to be an honest opinion.

Mr. TALIAFERRO. Yes, sir.

Senator TOBEY. But you want that opinion to be a true and proper opinion.

Mr. TALLIAFERRO. Yes, sir.

Senator TOBEY. I am wondering whether the mechanics set up are creating the proper result. Have you seen any material improvement along that line since the Securities and Exchange Commission was created and took action?

Mr. TALIAFERRO. You are speaking now of the S. E. C.?

Senator TOBEY. Yes.

Mr. TALIAFERRO. I see what I think is the beginning of improvement. I think I had better put it in that way.

Senator NEELY. If Mr. Berle's proposed amendment, to limit the operation of the bill to the Baltimore & Ohio and the Lehigh Valley Railroads should be rejected, would you favor or oppose the legislation?

Mr. TALIAFERRO. Do I understand your question to be that if limited to the Baltimore & Ohio and the Lehigh Valley would I favor or oppose the bill?

Senator NEELY. No. If it is not limited to them.

Mr. TALIAFERRO. Oh.

Senator NEELY. If the amendment should not be adopted, would you favor or oppose the bill?

Mr. TALIAFERRO. I would favor the bill. As a matter of fact, if the bill is limited to the Baltimore & Ohio and the Lehigh Valley, nothing I have said this morning is of any consequence.

Senator NEELY. Unfortunately, I was necessarily absent when you made the first part of your statement.

Mr. TALIAFERRO. I was suggesting some amendments that would make the bill workable where plans involved leased lines. In that connection it seems to me there is an unwarranted fear that certain railroads in reorganization will cause 77 proceedings to be dismissed in order to undertake this proceeding. If that theory exists, is it not—and I ask this very humbly—is it not possible to cure that very simply by changing section 710, where you now say—

> Any railroad corporation not in process of reorganization under section 77 of the Bankruptcy Act which, before or after the effective date of this chapter, shall have—

And putting in a specific date? For instance: Any railroad corporation not in process of reorganization under section 77 of the Bankruptcy Act today. That would make certain, it seems to me, although I am not a legal practitioner and am perfectly humble about it, but as a practical matter it seems to me that would cure all that fear

I might add that I do not quite see the fairness of limiting to the Baltimore & Ohio certain things, where exactly the same relief that would go to the B. & O. might be quite as applicable and beneficial. I want the B. & O. to keep what they have, and think they should have

it, but to say that certain other roads that may be in about the condition the B. & O. was in last year, are to be deprived of that opportunity would seem to me to be improper.

Senator NEELY. I presume that you would concur in the opinion previously expressed to the effect that there are sentimental and historical circumstances concerning the B. & O. and reasons based upon the high esteem in which Mr. Willard, the president of the road, is held, which do not operate in favor of other carriers.

Mr. TALIAFERRO. Oh, I subscribe to that.

Senator NEELY. The cause of the Baltimore & Ohio stands on higher ground than that of railroads which have been grossly mismanaged.

Mr. TALIAFERRO. All I can say is that I am completely in accord with that statement.

Senator NEELY. For many years I have been favorably impressed by the fact that Mr. Willard is apparently better loved by the railroad employees than is any other railroad president in the country.

Mr. TALIAFERRO. I can only say, with the little knowledge I have of that particular situation, I agree with your attitude toward the Baltimore & Ohio, and I hope nothing I have said nor any suggestions I have made will in any way interfere with or delay any action as to the burdens of the Baltimore & Ohio.

Senator NEELY. I hope that it will obtain the relief it seeks. My question was designed to ascertain your attitude in case amendments were not made.

Mr. TALIAFERRO. I am for the bill as I have said.

Senator NEELY. Some questions propounded yesterday by my distinguished friend from New Hampshire, Senator Tobey, indicated that there may be sentiment in favor of making the bill applicable to other railroads.

Mr. TALIAFERRO. I am in favor of making it applicable to more, but in any event applicable to the B. & O. I think that answers your question, does it not?

Senator NEELY. Yes; it does.

Mr. TALIAFERRO. Thank you very much for your consideration.

Senator MINTON (presiding). We thank you.

(Thereupon Mr. Taliaferro left the committee table.)

Senator MINTON (presiding). Is the representative from the Treasury Department here?

Mr. SHAW. Yes, sir.

Senator MINTON. Would you like to be heard?

Mr. SHAW. Yes, sir.

Senator MINTON. Then come around to the committee table and take a seat opposite the committee reporter.

## STATEMENT OF LUCIEN W. SHAW, OFFICE OF LEGISLATIVE COUNSEL, TREASURY DEPARTMENT, WASHINGTON, D. C.

Mr. SHAW. My name is Lucien W. Shaw. I am from the office of the Legislative Counsel of the Treasury Department. We do not appear here with respect to this bill to take any position on the general broad policy of it because the Treasury is not charged with primary responsibility in that matter. On the other hand, the Treasury Department does have an interest in seeing that claims and rights of the Treasury,



principally in respect of taxes and customs, are protected, and there are a few respects, more or less technical, in which we feel this bill as it passed the House, is somewhat defective in respect of the protection afforded to the Treasury.

I would, therefore, like to make a statement to the committee, and suggest a few amendments which we would like to have included in this bill. I might say in that connection that if the bill is to be restricted in the form Mr. Berle suggested yesterday, of course the interest of the Treasury Department becomes much less because it would be minor from our standpoint instead of being more of a major matter. In other words, with respect to two railroads the interest of the Treasury Department does not amount to a great deal; but with respect to many railroads it is quite important that the Treasury's interest in taxes and other claims should be carefully protected.

The relationship of the Treasury Department to railroad reorganization, with which H. R. 5407 deals, arises from (a) its claims for taxes or customs duties, (b) the indebtedness of various railroads to the United States in respect of loans made under the Transportation Act of 1920, and the collateral securing such loans——

Senator NEELY (interrupting). What is the amount of those loans?

Mr. SHAW. They amount to a total of about $30,000,000 being about $25,000,000 which were loans made under section 210 of the Transportation Act, and four or five million dollars of loans made under section 207. They involve 13 or 14 railroads altogether.

Senator MINTON (presiding). You may continue your statement.

Mr. SHAW. And (c) miscellaneous claims of the Treasury Department or of other Government departments and agencies whose claims pursuant to the applicable provisions of law are represented by the Secretary of the Treasury. The discussion in this memorandum relates primarily to the claims of the United States for taxes and customs duties, though claims of the other types are involved with respect to certain of the matters.

1. Section 274 of the Internal Revenue Code and the corresponding provisions of prior revenue acts require that when a taxpayer has been adjudicated bankrupt all deficiencies in income and excess profits taxes shall be immediately assessed, and contemplate that claims for such deficiencies be presented to the court in which such bankruptcy proceeding is pending for adjudication pursuant to law. These provisions have been considered applicable with respect to railroad reorganizations under section 77 and corporate reorganizations under chapter X of the Bankruptcy Act, as amended, the order approving the petition as properly filed being considered equivalent for this purpose to a bankruptcy adjudication. This procedure has, it is believed, proved entirely satisfactory in practice to all concerned.

The provisions of H. R. 5407 are not wholly clear as to the authority of the special court provided for therein to determine the amount and legality of claims of the United States for taxes or customs duties, where the validity of such claims is disputed. It is also not clear that the order of the special court approving the petition under the proposed new procedure should be considered as having the effect of an adjudication of bankruptcy of the petitioner for the purpose of rendering applicable section 274 of the Internal Revenue Code. It is believed desirable that clarifying amendments be made in these respects.

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II. A problem also exists where claims of the United States for taxes or customs duties are undisputed or have been adjudicated in the proceedings as above suggested. It is not clear under H. R. 5407 (see sec. 715 and 726) whether during the pendency of the proceedings the United States would be entitled to proceed with the enforcement of such claims in the usual manner applicable to taxpayers not undergoing reorganization or whether such enforcement must take place in the court proceedings and perhaps under the proposed plan of adjustment. While it is believed that under the provisions of H. R. 5407, in its present form, the United States during the proceedings would be entitled to proceed in the enforcement of its claims in the usual manner, it is suggested that particular cases may be more satisfactorily dealt with if the special court be specifically authorized by amendment to direct payment by the petitioner of Government claims for taxes or customs duties.

III. As already indicated, the pendency of a proceeding under H. R. 5407 may result in difficulties or delay in determination and enforcement of Federal claims for taxes or customs duties. Therefore, it is believed desirable that the bill be amended to provide that the running of the statute of limitations on the assessment or collection of any internal-revenue tax shall be suspended while such a proceeding is pending and until it is finally dismissed. Such a provision, insofar as internal-revenue taxes are concerned, would be analogous to the provision of section 77 (b), relating to railroad reorganizations, section 261 of chapter X, relating to corporate reorganizations, and other chapters of the Bankruptcy Act (ch. XI, sec. 391; ch. XII, sec. 516; ch. XIII, sec. 676).

Section 77 (e) of the Bankruptcy Act provides that if the United States, or any agency thereof, or any corporation—other than the Reconstruction Finance Corporation—the majority of the stock of which is owned by the United States, is a creditor or stockholder of the debtor railroad, the interests or claims thereof shall be deemed to be affected by the plan. It further provides that if in any reorganization proceeding under that section the United States is a creditor on claims for taxes or customs duties no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance of a lesser amount of the Secretary of the Treasury certified to the court; provided that if the Secretary fails to accept a plan for more than 90 days after receipt of written notice so to do from the court to which the plan has been proposed, accompanied by a certified copy of the plan, his consent shall be conclusively presumed. Corresponding provisions are contained in sections 199 of chapter X, relating to corporate reorganizations, and section 455 of chapter XII, relating to real property adjustments by persons other than corporations.

The foregoing provisions, it is believed, have worked very satisfactorily in actual practice to the Government, the court in which the proceedings are pending, and other interested parties in the proceedings. They have made definite and certain the interest of the United States in the proceedings. Where the United States is a creditor for taxes or customs duties they have enabled the Secretary of the Treasury—who is authorized to act in respect of the interests and claims of the United States—to insist upon reasonable provisions being made for such claims and for the protection of the revenue.



In connection with such provision the Secretary has been enabled to require not merely a formal statement as to the payment of the claim of the United States but that the provisions of the plan with respect to other payments to be made thereunder, the liens and charges created thereby, and the provisions with respect to the future affairs of the debtor shall be such that there is a reasonable likelihood of the actual collection and enforcement of the Government's claim.

Now I come to the provisions of this bill: Under the provisions of H. R. 5407 in its present form the Secretary of the Treasury is authorized to act in respect of the interests or claims of the United States and of corporations—other than Reconstruction Finance Corporation—the majority of the stock of which is owned by the United States. No provision is made, however, that the interests or claims of the United States shall be deemed to be affected by the proceedings or the plan.

As I pointed out, section 77 and chapter X, which we feel are most closely related to this, do contain an express provision that the claims and interests of the United States shall be deemed to be affected by the plan.

Furthermore, the requirement of section 77 (e), section 199, and section 455 of the Bankruptcy Act that the plan affirmatively provide for the full payment of Federal taxes and customs duties is replaced by a provision requiring the consent of the Secretary of the Treasury only if the plan specifically provides for the payment of less than the full amount of such claim or the postponement of its payment. In other words, the provisions in the other act provide that the plan must state expressly that full payment of the Federal taxes is to be made. That has been twisted about to a certain extent in this bill, so that the requirement is that the Secretary must consent in cases only where provision is expressly made in the plan for payment of less than the full amount. Thus, the plan can remain completely silent about the taxes, and no approval or action is required by the Secretary of the Treasury; whereas under the other provisions if the plan remains silent, the approval of the Secretary of the Treasury must be obtained to it.

Obviously, both of these changes weaken the protection afforded to claims of the United States under corresponding provisions of other chapters of the Bankruptcy Act. Under the proposed provisions a plan of adjustment seriously affecting in its practical operation the collectibility of the claims of the United States might be put into effect despite objection by the Secretary of the Treasury. It is suggested, accordingly, that the provisions of section 722 of H. R. 5407 be changed to correspond to the similar provisions of other chapters of the Bankruptcy Act above referred to, which, as noted, have proven entirely satisfactory in their operation.

I have here the amendments which we have proposed. I shall be glad to hand copies to the members of the committee and to the reporter.

(The amendments referred to are as follows:)

PROPOSED DRAFT OF AMENDMENTS TO H. R. 5407

1. Page 13, line 22, after section 737, add a new section as follows:

"SEC. 738. The special court shall have power to determine the amount and legality of claims of the United States for taxes or customs duties, and to order payment thereof; and the order of the special court (provided for in sec. 714)

approving the petition shall have the effect of an adjudication of bankruptcy of the petitioner for the purposes of section 274 of the Internal Revenue Code and the corresponding provisions of prior and subsequent revenue acts. The running of the statute of limitations on the assessment or collection of any internal revenue tax shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed."

2. Page 8, line 2, after "stockholder," insert: "the interests or claims thereof shall be deemed to be affected by a plan under this chapter and".

3. Page 8, line 9, strike out the remainder of the section after "plan" and substitute: "which does not provide for the payment thereof shall be approved by the court except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court: *Provided*, That if the Secretary of the Treasury shall fail to accept or reject such lesser amount for more than sixty days after receipt of written notice so to do from the court, accompanied by a certified copy of the plan, the consent of the United States insofar as its claims for taxes or customs duties are concerned shall be conclusively presumed."

Mr. SHAW. There are one or two matters to which I also should like to make brief reference. Principally they appear in section 735, which is the first section under the heading "Tax provisions." The first sentence of section 735 provides that—

> the provisions of sections 1801, 1802, 3481, and 3482 of the Internal Revenue Code and any amendments thereto, unless specifically providing to the contrary shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any plan of adjustment confirmed under the provisions of this chapter.

Since the reference there is only to section numbers, it is not entirely clear what that is; but they refer to the imposition of stamp taxes, and the effect of this is to create an express exemption from all stamp taxes with respect to all securities which are issued or transferred under the provisions of a plan under this act.

I might say that provisions similar to this appear in section 77 and chapter X of the Bankruptcy Act; and the Treasury from the beginning has consistently taken the position that it opposes exemptions of this type. The Treasury still takes that position because the exemption results in administrative difficulty and diminishes the revenues. We are still opposed to such a provision; but since it appears in the other provisions I mentioned, I suppose the committee would not wish to make a change of the matter in this bill; so we do not make any strong point of this, but merely wish it to be understood that the Treasury is still opposed to this exemption.

The other point which I also might mention relates to the second sentence in section 735, which contains a provision that the cancelation or modification of indebtedness under a plan under this act shall not result in income to the taxpayer—that is, the railroad—under this act. There is a provision similar to that also which appears in chapter X and in chapters XI, XII, and XIII of the Bankruptcy Act, as amended last year. The effect of that is that where a debtor, as they are termed under the other provisions, has a debt canceled or reduced, the ordinary rule of law in some instances—and the law is not entirely clear, so I cannot make categorical statements—is to the effect that the amount of that cancelation is income to the debtor. Now, the Bankruptcy Act provisions made last year provided that notwithstanding that rule of law, no income would be deemed to result to the debtor from such cancelation under bankruptcy proceedings.

Accompanying that provision in the chapters enacted last year was a further provision to the effect that in any case where there was a



cancelation of indebtedness, the amount of the cancelation should result in the reduction of the basis of the debtor's property —"basis" is a technical term, under our Revenue Acts, which serves the purpose of designating the cost, where there is a future sale of the assets. In other words, if the property was purchased for $100 and the debtor goes through a reorganization under chapter X and the debts are scaled down by the amount of $10, this provision I am referring to provided that the $100 cost basis of that property should be reduced to $80, so that when the taxpayer in the future might sell that property he would report on a profit computed with $80 as his cost, instead of $100.

There has been considerable objection to that provision, as operating too broadly. The Treasury Department at the moment is not clear as to what should be the proper provision. It might seem that this act should be changed in accord with the provision which appears in other places; but it may be that in the future we shall want to recommend amendments to the other provisions of the Bankruptcy Act; it is a long and difficult problem to work out, and we simply do not have the answer of what the correct provision should be. Therefore we informed the House committee, when they were considering this bill, that pending our deliberations—which still have not been completed—as to what provision should be made there, we would make no objection to the inclusion of this provision to the effect that there should be no income resulting without the similar inclusion of the other provision for reduction of basis.

I would say that our position is still the same. We think perhaps something should be included on this matter, but we cannot recommend what it should be; therefore we can make no objection to the bill in its present form.

Senator NEELY. Mr. Shaw, what is embraced in the expression "customs duties," as used in the third line of the amendment you propose?

Mr. SHAW. I suspect that that is a matter of minor importance in connection with railroads; but it relates to the duties under the tariff act, which are due from the importer. If the railroad imported some article, there would be a claim by the United States for customs duties. It is probably of minor importance in connection with railroads; it is simply the same language as that in chapter X and section 77 and others.

Senator SCHWARTZ. They probably import some oil and timber at times, for their own use, from Canada.

Mr. SHAW. That may be.

That completes my statement, unless there are questions from the Senators.

Senator MINTON (presiding). Thank you.

Senator MINTON (presiding). Is Mr. Craven here?

Mr. LESLIE CRAVEN. Yes, sir.

Senator MINTON. Are you ready to proceed, Mr. Craven?

Mr. CRAVEN. I can. I understood I was later on the program.

Senator MINTON. Well, our program is somewhat varied, Mr. Craven. If you can go ahead now, we shall be glad to hear you.

## STATEMENT OF LESLIE CRAVEN, MEMBER OF THE FIRM OF MILLER, OWEN, OTIS AND BAILLY, 15 BROAD STREET, NEW YORK CITY, AND REPRESENTING THE RAILWAY SECURITY OWNERS ASSOCIATION

Mr. CRAVEN. Mr. Chairman, my name is Leslie Craven. I am a lawyer. I live in New York. I represent the Railway Security Owners Association. That is an association of the insurance companies and the savings banks. Its membership consists entirely of institutions of that sort. Without going into detail, let me say that its membership consists of 31 life insurance companies who hold, in railroad bonds, approximately $2,326,000,000 worth, and in railroad stocks $57,125,000 worth. The membership also includes 23 fire and casualty insurance companies, who own about $50,000,000 worth of railroad bonds and about $19,000,000 worth of railroad stocks. There is, in addition, a membership of 375 mutual savings banks, the exact holdings of which I do not have, but they are very substantial in amount. The aggregate holdings of all these institution investors are about $3,300,000,000.

You will notice that the people for whom I speak hold these funds, which they have invested in these railroad securities, in a fiduciary capacity. They are not profit organizations or money-making institutions. They have invested these funds in what used to be regarded as gilt-edged investments.

The securities which they hold are the substance back of the insurance policies and the savings deposits. The insurance policies issued by this group of insurance companies aggregate about 90,000,000. There are about 60,000,000 policyholders. There are depositors in the savings banks in the aggregate of 11,323,000. The average deposit is about $700. They are small holders.

As some of you may know, I was counsel for Joseph B. Eastman when he was Federal Coordinator of Transportation. I worked a whole year on section 77 and was responsible in part for the comprehensive amendments which were suggested by Mr. Eastman and which were largely incorporated by the House Judiciary Committee, and by your committee, although you did not go into the matter in great detail, when the 1935 amendments were passed. I spent a whole year working on section 77, with an adequate staff. That is why I am here: because of my familiarity with the development of the legislation.

We are in favor of the passage of this bill, as we understand it. I do not know whether you heard—perhaps you did—the testimony of Mr. Berle yesterday. I think if we had the same understanding of this bill as Mr. Berle has, we would reach somewhat the same conclusions. However, it seems that his interpretation of the bill must be based on a limited study of its legislative history. He did not appear before the House committee, and evidently he has not read the hearings of the House Judiciary Committee or its report.

In the first place, we do not regard this bill as one which permits a railroad moratorium. We favor no such thing. We realize that it is necessary to have sound reorganizations of these roads, and we are not attempring to escape realistic reorganizations. We have too much sense to believe that the stability of the railroads of this country will be assisted by shoddy reorganizations. We are interested in



sound reorganizations, because we have this money invested in these properties, are interested in all these various reorganization cases that are going on. We also are perhaps the largest reservoir of investment capital available for the future financing of these railroads. In fact, in the past we have been one of the great, if not the greatest contributors of the capital of the country to their support; and we wish to protect them as a field of investment for the future. Now, that requires sound finance. We are not against that. We would not be in favor of this bill if we thought that it, as actually administered, would be productive of an unsound financial condition. How could we?

Now, you will see from what I have said, if you heard Mr. Berle, that it must be that he differs from the insurance companies and savings banks as to how this bill will be administered. I shall confine myself, in the interests of brevity, to a reply to his remarks; because his analysis was intelligent and thorough, and I think he overooked nothing of importance in the bill.

The bill permits the stockholders to put forward a plan. The plan is to be governed by the principles of the *Boyd case*. It has to conform to the law of the land in protecting the rights of the creditors and stockholders, and recognizing their priorities. That means that the use of this legislation will be definitely limited. This bill has been put forward not as a means of permitting roads to evade reorganization. It was put forward as being useful for a single one of three classes of railroads: not those that need radical reorganization, not those that need no reorganization at all; but roads which are temporarily financially embarrassed and which, by this process, and avoiding all the panoply and the paraphernalia of expensive reorganizations, can make an adjustment with their creditors which will tide them over a temporary situation, they retaining control of their property, and that adjustment to be one which will not be at the expense of their creditors; because the *Boyd case* does not permit the debtor to remain in control of his property and in the full exercise of his rights if that is done in a manner which is at a sacrifice of the rights of the creditors secured by their primary lien. That is the effect of the *Boyd case*. If the bill is thus administered, it will have a very limited application.

What I have said indicates the protection of the private rights. So far as the protection of the public rights is concerned, it is our understanding of this bill—and in contradistinction to the views offered by Mr. Berle—that the Interstate Commerce Commission has to approve the plan as being in the public interest—as being "in the public interest" and not merely "compatible" with it, as Judge Fletcher would have you change it—on page 4 in subsection 2. Our conception of this matter is that the Commission could not approve that modification or adjustment of securities as being in the public interest unless the plan were in the public interest. That is perfectly obvious. There has to be a specific finding that the plan or that the modification is in the public interest.

Therefore, Mr. Berle is, I think, entirely erroneous when he declares that, after all, the Interstate Commerce Commission is merely going to do what it does under section 20 (a), not actually pass upon the merits of the plan. That necessity was directed to the attention of the House committee, by Mr. Eastman; as you will find on page 85 of the report which accompanies the printed hearings of the House

Judiciary Committee. He called attention to the fact that there was not an adequate protection of the public interest. As a consequence, in executive session, the House Judiciary Committee changed the language of section 2, and departed from the language in 20 (a), which said "compatible with the public interest," and inserted the provision that there must be a specific finding that such proposed issuance or modification is in the public interest—which means that it is positively for the good of the public interest.

That was done with the deliberate purpose of fixing it so that the Commission would have to find that this railroad was one where it properly could be handled by this sort of treatment. Under this law as it is drafted—and if it is not sufficiently clear, it may well be made more clear—the Commission will not be permitted to allow some road with a top-heavy capital structure, under the benefit of this legislation, to avoid the realistic and drastic reorganization which is required in the interest not only of the public but of the creditors, including ourselves.

So Mr. Berle is off the track with an erroneous understanding of the bill. He did not have the knowledge of its legislative history.

Now, I am taking his points, as nearly as I can, in order. I do not have access to a stenographic record; consequently I may not quote him exactly, but I do the best I can. He says, "Why, roads that are under reorganization under section 77 could get the benefits of this law. As you read the bill it does not look that way, but they could dismiss their cases under section 77 and come in here."

I do not see how that is possible; because the debtor has got to get the consent of the creditors before he can come in. Much has been said here to the effect that this legislation is not in the interests of the creditors. Do they think these insurance companies and savings banks are asleep? Look at the necessities of this debtor getting the approval of these creditors: These railroads could not move a hand or foot unless thay got the approval of the creditors. These percentages are deliberately made high, in order to protect the creditor interests. We succeeded in having them raised, before the House committee, and we think we are amply protected.

It is not desirable, and I do not think it would be desirable, to let a company being organized under section 77 come under this act. I think it probably not of a type which could not properly have its debts adjusted here. I also would agree with Mr. Berle that a railroad that is now in equity receivership should not be permitted to get the benefit of this ct. We objected to their inclusion before the House Judiciary Committee. We said, "Those roads are roads that are in equity already; many of them have been there for years. They were the first to fall; they were the ripest fruit. This act is not intended to permit any such reorganization of any such properties, and we would not invite them to come in, as this bill permits." So I would agree with Mr. Berle upon that point. You will notice that there are various respects in which I agree with him.

Senator NEELY. I asume that you favor Mr. Berle's amendment, which is designed to restrict the operation of the bill to the Baltimore & Ohio and the Lehigh Valley? Is that correct?

Mr. CRAVEN. No, sir; I am sorry. I know your views, but I am not able to believe that it ought to be restricted to that purpose, however, I shall come to that and give you my views upon it, for what they are worth.



Mr. Berle objects that there are no trustees to be appointed. Well, we do not think that is essential, considering the simple kind of adjustment that is contemplated here. He talks about it as though this were a reorganization bill, as though it were intended to be a substitute for section 77 or equity. We do not so regard it. We did ask, and it was allowed us, that there be a provision whereby—and I am now reading from page 10, lines 11 to 14—"The plan of adjustment may contain appropriate provisions whereby the interests of creditors affected by the plan shall be safeguarded in all matters of the petitioner's financial policy and operations." That is a rather weak provision, because it uses the word "may." Of course these railroad people—the management—Judge Fletcher—are anxious to avoid, if they can, the appointment of any trustee. Inasmuch as there is to be no trustee, we wanted that provision, and we were willing to have it even in the form which says that the plan of adjustment "may" contain appropriate provisions. I am now disposed to suggest that that ought to read "The plan of adjustment shall contain appropriate provisions." It seems to me—having in mind that no trustee is to be appointed—that it is well that the plan shall contain such provisions as may be agreed to, for the purpose of seeing to it that the interests of these creditors—who are debarred from any suit when this court gets jurisdiction—may be safeguarded in all matters which relate to the financial policy and operations. Then the creditors could object to an unwise expenditure of money for maintenance, for example, which is one of the things that frequently happens in reorganizations: the receivers will not pay interest to the creditors, and will spend too much money on maintenance.

Senator SCHWARTZ. The other charge is that they let the maintenance go until it is not safe to ride on the railroad, in order to pay the dividends to the stockholders.

Mr. CRAVEN. You are getting the two sides of the question. The receivers are apt to spend plenty of money on maintenance, and are not interested in paying the creditors.

However, here is an important matter to which I invite your particular attention: Mr. Berle has a fundamentally different conception of the underlying law with reference to the substantive rights of creditors in reorganizations and in such adjustments as are involved by this bill. That is expressed by his proposed amendment on page 1. He wants to designate the bill as "for the relief of debtor railroads" and—what is more important—on page 9, in line 6, which is the provision that expresses the whole substance of the act, so far as substantive rights are concerned, he wants to strike out the provisions which express the *Boyd case*. You know what I mean by the *Boyd case:* That is a fundamental case which requires that the legal rights, which arise out of the provisions of the mortgages have to be fully recognized. You cannot put through a plan of reorganization, under which you will permit the debtor to remain in his position of ownership, at the expense of the rights of the creditors. We insist upon the recognition of that doctrine. It is a doctrine declared by the Supreme Court of the United States. It is the doctrine declared as applicable to section 77 by the Interstate Commerce Commission, and as applicable to section 77B in at least 15 decisions of the courts. We insist upon it because, as creditors, we cannot consent to the break-down of the legal rights which we have secured through these liens. We invested our money, at low interest rates on account of

the supposed security which results from the sanctity of those contracts. We are not going to consent to have those rights abolished, and we do not think anybody can abolish them, because the fifth amendment applies to these bankruptcy proceedings.

Mr. Berle would amend section 3, on page 9, by striking out that language which is recognized as the expression of these fundamental rights and he would have this plan approved, in his language, "if the plan is an equitable composition." Now, what is an "equitable composition"? Well, nobody knows. The reason nobody knows is this: Under the law of this country, the so-called composition has never been applied at all to the reorganization of corporations. The composition has been something which has been useful where dealing with unsecured creditors only. There is no precedent whatever, and there is no body of law in our American jurisprudence, by which, one could tell what was an "equitable composition." There has been a lot of heresy preached. The funny thing about this is that Mr. Berle seemsto have formed a union with such interests as the Van Swerenginterests.

Senator TOBEY. What do you think that would produce?

Mr. CRAVEN. It would produce something purely illegitimate.

Senator TOBEY. It would be a hybrid, would it not?

Mr. CRAVEN. Yes, sir; it would be purely illegitimate. I shall tell you why:

Just as soon as section 77 got into action, the Van Sweringen interests, represented by a very able and admirable lawyer from Chicago, said, "This language"—which I have been discussing with you in paragraph 3 on page 9—"does not mean that you have to protect the fundamental rights of these mortgages. This is a 'composition statute,' and it means that the debtor can get together with the creditors, and make any bargain with them that he can get them to make; he can cut down substantive rights just as far as he can get them to concede it; and then he can take that agreement and force it down the throats of the dissenters in the respective classes of security holders."

Senator TOBEY. What is the name of that admirable lawyer?

Mr. CRAVEN. Ernest S. Ballard. He is a good lawyer, except that he has some funny ideas.

Senator NEELY. Do you mean that he successfully represents this clients?

Mr. CRAVEN. I mean, perhaps, that he disagrees with me. But, joking aside, he disagrees with the Supreme Court of the United States, and the Interstate Commerce Commission gave him short shrift; in accordance with the decisions of the Federal courts, which deal with the provisions of section 77B—you understand that 77B is a companion statute which is much like section 77, which applies to reorganizations of industrial corporations: In those decisions there is only one, so far as I know, that would be any way lend any countenance to Mr. Ballard's view; and yet Mr. Berle comes here, and in this act, would set up that kind of a statute: would make it read that the plan is an "equitable composition."

Senator MINTON (presiding). Pardon me just a moment, please. If it is agreeable, we shall suspend at this point, and shall reconvene tomorrow morning at 10:30.

(Thereupon, at 11:55 a. m., an adjournment was taken until tomorrow, Friday, May 12, 1939, at 10:30 a. m. in the Interstate Commerce Committee room in the Capitol.)

# TO AMEND THE BANKRUPTCY ACT

**FRIDAY, MAY 12, 1939**

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
*Washington, D. C.*

The committee met, pursuant to adjournment on yesterday, at 10:30 a. m., in the Capitol, Senator Burton K. Wheeler presiding.

Present: Senators Wheeler (chairman), Neely, Truman, Tobey, and Shipstead.

The CHAIRMAN. The committee will come to order. Mr. Craven, have you completed your statement?

Mr. CRAVEN. I have not, Mr. Chairman. But Mr. Barbour is present and would like to be heard just for a few minutes, and I am willing to step aside for that purpose.

The CHAIRMAN. All right. We will hear Mr. Barbour.

## STATEMENT OF A. B. BARBOUR, MANAGER OF TRANSPORTATION AND COMMUNICATIONS DEPARTMENT, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. BARBOUR. My name is A. B. Barbour. I am manager of the transportation and communications department of the Chamber of Commerce of the United States. I am appearing on behalf of the Transportation Conference of 1938–39, that was organized by the chamber last summer and worked through the fall and winter, and has prepared recommendations on a number of phases of the transportation problem. Those have been submitted in writing to the chairman and members of this committee, and I wish simply to point out the recommendation which relates to the bill now before the committee, H. R. 5407. This recommendation reads as follows:

> To facilitate reorganizations there should be legislation to permit a carrier and its stockholders and creditors to secure approval by the Interstate Commerce Commission of an agreed plan of reorganization which, when so approved, may be made promptly effective against small minority interests by a bankruptcy court, without the appointment of a trustee.

That, Mr. Chairman, was formally placed on the agenda of the conference, was submitted to all members and maturely considered, and there was I think an entirely unanimous agreement as to the desirability of such a measure.

The CHAIRMAN. Of course, the trouble is that you speak in generalities. I can easily say that I favor something, and everybody else can say they favor that same thing, but when they attempt to place it in legislative form there arises so many differences of opinion as to how it is going to be put into operation, that you probably would not recog-

nize it. That is the difficulty with these resolutions which the Chamber of Commerce of the United States passes.

Mr. BARBOUR. We fully recognize that it is——

The CHAIRMAN (continuing). On the face of it it is quite fine, but when you come up to the Congress to try to put it into practice you find quite a different thing.

Senator TOBEY. Not only as to resolutions adopted by the Chamber of Commerce of the United States but those adopted by many kindred organizations.

The CHAIRMAN. Yes.

Mr. BARBOUR. We fully recognize the limitations on our work, but what we do want to develop to you is the considered agreement of a very representative group of people.

The CHAIRMAN. Certainly, but that is the difficulty.

Mr. BARBOUR. I have been in this transportation game a long time, for many years, and I have never seen assembled as expert and completely representative group of business interests concerned in transportation as we had in this Transportation Conference. And we had our sessions behind closed doors, so that those present would be able to talk freely and frankly.

The CHAIRMAN. So that they could, so to speak, take their hair down.

Mr. BARBOUR. And they did it. And while that plan may not be as complete as some people would like to have it, yet it expresses——

The CHAIRMAN (interposing). Yes, I heard some repercussions about it.

Mr. BARBOUR. Well, the repercussions perhaps related to the point that it is not as complete a program as one might wish to see, but we feel it made a good beginning; and the main point I wanted to make here was simply that interests representing—well, I would like briefly to indicate who they were: Shippers predominated in that conference, and——

The CHAIRMAN (interposing). What kind of shippers?

Mr. BARBOUR. Shippers' representatives. They had present representatives of the organization of shippers, I mean the National Industrial Traffic League. They were there as individuals but they were officials of the league and know the policies, purposes, and attitude of the league, and what the league approved. The same may be said with regard to the regional advisory boards. And then I think we had 25 or 30 out of a total conference of 70, of men representing commodity lines, such as coal, timber drygoods, and so on, of the different kinds of commodities.

The CHAIRMAN. The trouble with the Chamber of Commerce of the United States is that it has gone Republican, and you are here talking to a Democratic Congress.

Mr. BALBOUR. Well, Senator Wheeler, we are so totally nonpolitical—[laughter]—that I do not understand that allusion.

Senator NEELY. Have you any evidence of that?

Mr. BARBOUR. Of what?

Senator NEELY. Evidence that you are nonpolitical.

Mr. BARBOUR. Well, I think the burden of proof is on the other side.

The CHAIRMAN. All right. We will let it go at that. You may proceed with your statement.



Mr. BARBOUR. In addition to shippers we had present representatives of railroads, of motor transport, of water transport, of air transport, of investors. Mr. Craven was very active in this conference, and I understand he is now here on the stand and I am simply an interloper for the moment; and we also had present economists, and those people worked very earnestly and very seriously, and I think they were unanimous in the feeling that legislation of this sort ought to be enacted into law, and of course we are very pleased to know that it is in such good hands up here on the Hill.

The CHAIRMAN. We thank you.

Mr. BARBOUR. I want to say that we did not attempt to pass upon the details of the bill, of course, for we did not have it before us.

I thank you.

(Thereupon Mr. Barbour left the committee table.)

The CHAIRMAN. Mr. Craven, how much time do you want to take to finish your statement?

Mr. CRAVEN. Senator Wheeler, I just got well started yesterday. I have no desire to use up more time than is necessary, and think I can get through in half an hour. At least I will make every effort to do so.

THE CHAIRMAN. You may proceed.

## STATEMENT OF LESLIE CRAVEN, OF MILLER, OWEN, OTIS AND BAILLY, 15 BROAD STREET, NEW YORK CITY, REPRESENTING THE RAILWAY SECURITY OWNERS ASSOCIATION—Resumed

Mr. CRAVEN. I would like to repeat a little bit in order to give you——

The CHAIRMAN (interposing). Do not repeat.

Mr. CRAVEN. Well, I at least want you to know where we stand.

The CHAIRMAN. All right.

Mr. CRAVEN. That is all I will attempt to do.

The CHAIRMAN. If it is the expectation to get this bill through Congress in some form we cannot continue these hearings very long.

Mr. CRAVEN. I shall not delay you long, I promise you that. What I was saying yesterday was this: That as we diagnosed this bill it was not as it was diagnosed by Mr. Berle and others, and if——

The CHAIRMAN (interposing). Will you please speak a little louder. It is wearing on the committee to try to concentrate when you speak so low.

Mr. CRAVEN. I started to say if we had diagnosed this bill the way it is diagnosed by Mr. Berle, and some others, we of course would not favor it.

The CHAIRMAN. When you say "we", to whom do you refer?

Mr. CRAVEN. I am speaking, as I think I made clear yesterday, for the Railroad Security Owners Association, which is an association of the savings banks and insurance companies. You will remember, perhaps, that I represented them when I appeared before you on S. 1869. The views I am stating are not merely my personal views. I am doing the best I can to express their views, and——

The CHAIRMAN (interposing). You mean to express the views of your client.

Mr. CRAVEN. Yes, sir; although everything I say I believe myself. Let me say that I would not attempt to tell you anything I do not believe myself.

The CHAIRMAN. All right.

Mr. CRAVEN. Do you doubt that, Senator Neely?

Senator NEELY. I could not repress a smile when you made that statement. Because you are the first successful lawyer I have ever known who limited his argument to the facts which he personally knew or believed to be true, regardless of the demands of his client, or the necessity of the client's case.

Mr. CRAVEN. It happens that there is a coincidence of the views of client and lawyer here.

Senator NEELY. You are apparently well informed and ably representing your clients.

Mr. CRAVEN. We do the best we can.

The CHAIRMAN. You may proceed with your statement.

Mr. CRAVEN. Now, we are in favor of sound reorganizations; that it is perfectly clear is to our benefit. As I said on yesterday——

The CHAIRMAN (interposing). Well, all I can say is that your organization has approved a tremendous number which proved unsound.

Mr. CRAVEN. Do you mean under the present law?

The CHAIRMAN. Yes.

Mr. CRAVEN. Well, I cannot agree——

The CHAIRMAN (continuing). Or I mean under past laws.

Mr. CRAVEN. I cannot go into all of the details, but——

The CHAIRMAN (interposing). What I am trying to say is this: You represent insurance companies and savings banks, and in the past they have proposed many railroad reorganizations plans which they felt were sound and would cure all ills, and yet in a couple of years, and sometimes inside of 6 months, the reorganizations proved as unsound as it was possible for them to be.

Mr. CRAVEN. Well, now, there is a lot to be said about that but I am not going to say it. At the same time——

The CHAIRMAN (interposing). Well, it is true, is it not?

Mr. CRAVEN. No, sir; it is not true.

The CHAIRMAN. Did you Kuhn, Loeb & Co. and some other bankers in the case of the Missouri Pacific propose a plan, and did not some of the insurance companies you represent propose a plan, and then were they not withdrawn, or did they not prove unsound? And was not that the case when you come to the St. Paul Railroad? Has not your group approved plans in a number of reorganizations that afterward proved unsound?

Mr. CRAVEN. Are you now looking back to all past history?

The CHAIRMAN. Yes.

Mr. CRAVEN. I am not going to defend all the action of savings banks and insurance companies ineverything they have proposed in some of the difficult times we have passed through. What I meant to say, when I contradicted you quite flatly a minute ago, was this: That the insurance companies and others who have put forward plans under section 77, which plans had to be changed, put them forward, you must remember, when times were so uncertain, and when condition afterward changed materially. For example, we proposed plans that did not contemplate or expect the 1938 dip in earnings, and, when that dip in earnings came, of course those plans went out the window—I mean, had to be revised. So it is not as simple as it looks. It is difficult to forecast changing conditions.



What I was going to say was: We are, of course, in favor of sound reorganizations, and we are not in favor of this bill if it is to be regarded as a bill whereby there may be established a moratorium which will be an escape from sound reorganizations. We do not understand that——

Senator SHIPSTEAD (interposing). Are you going to explain what you consider to be sound reorganizations?

Mr. CRAVEN. I could.

Senator SHIPSTEAD. I wish you would do so in your own time. I should like to have your views on that subject, but go ahead with your statement.

Mr. CRAVEN. All right. I will come back to that.

Senator SHIPSTEAD. Thank you.

Mr. CRAVEN. Now, as we understand this bill, Senator Wheeler, it is a bill of distinctly limited application, and is not of the broad scope which Mr. Berle gives it and which it is given, I mean by interpretation, by——

The CHAIRMAN (interposing). Why not?

Mr. CRAVEN. Now, let me explain it——

The CHAIRMAN (interposing). But you seem to take so long to come to the point.

Mr. CRAVEN. I will come directly to the point a lot faster if you will let me do it.

The CHAIRMAN. I have tried to let you do it.

Mr. CRAVEN. I only started my statement shortly before adjournment yesterday. But I will explain it briefly if you will give me an opportunity, for it is a perfectly simple proposition.

The CHAIRMAN. All right. Go ahead and explain it.

Mr. CRAVEN. I was attempting to say that we regard this bill as of distinctly limited scope. It is not intended as a substitute for section 77. It could not be used as such a substitute. It was not so designed. If you will read the report——

The CHAIRMAN (interposing). Who designed it, or who drafted the bill?

Mr. CRAVEN. How is that?

The CHAIRMAN. I say, who drafted the bill? Did you draft it?

Mr. CRAVEN. No; I did not draft the bill.

The CHAIRMAN. Do you know who did draft the bill? You are talking about the people who drafted the bill, and I want to know who did draft it.

Mr. CRAVEN. As I understand it, the first time that the proposal was suggested was in a letter of Mr. Bruere, of the Bowery Savings Bank, commenting upon the report of the Committee of Three a year ago At least, this was the first time I saw the idea deevloped. The idea had its genesis in the municipal bankruptcy law. The next time I saw it developed was a draft prepared by Colonel Anderson, who sits at my right. We are not the proponents of the bill at all. Colonel Anderson can explain that perhaps better than I.

Now, the report of the subcommittee of the bankruptcy committee of the House Judiciary Committee says that this bill is not intended as an amendment of, or a substitute for, section 77 of the Bankruptcy Act. That is to be foune on page 3 of the report of that committee, which was put out when H. R. 5407 was reported to the House. And that report, on its very first page, made clear that this is intended

for a certain type of carriers; that is, those railroads which do not need radical reorganization. Now, this is not an attempt to avoid radical reorganizations; it is not a substitute for section 77, and could not be used as such——

The CHAIRMAN (interposing). Let me say this to you in response to that: Counsel for one of the roads that is today in bankruptcy called on me this morning and urged that this bill be enacted into law because he felt if this bill were passed he could take this road out of bankruptcy and adopt this process. You are arguing that that is not the purpose of this bill. I say that under this bill, regardless of what you say about it, they can attempt it, and that is what they are going to try to do, and in my judgment if it is enacted into law that is what you will get. You can argue all you want to along the line that it is not intended in the minds of those who drafted it that it should have such effect, but the bill was drafted, as you know or should know, in one of the biggest law firms in the city of New York, and who represent Kuhn, Loeb & Co.

Mr. CRAVEN. I do not know that.

The CHAIRMAN. They not only represent one railroad but a number of railroads, and that is their business.

Mr. CRAVEN. I do not understand that it was drawn by Mr. Swaine, of Cravath, de Gersdorff, Swaine & Wood.

The CHAIRMAN. You say you do not understand that they drafted it?

Mr. CRAVEN. No, sir. I understand that they did not. Let me say this to you, Senator Wheeler, that I can demonstrate to you the bill cannot be used in the manner stated by you. Now, the reason for that is simple; it is impossible to have that broad use of it for this reason: In the first place, it is made abundantly clear in this bill, in the section which provides for the standard by which the plan is to be tested, on page 9, paragraph 3, that the plan has got to conform to the principles of the *Boyd case*. And that could not be done if——

The CHAIRMAN (interposing). Oh, now, you do not have to submit a plan to the Interstate Commerce Commission at all. The I. C. C. has said that it does not have to pass upon a plan, but simply upon the question of issuance of securities. Mr. Eastman says:

> It appears that it is the intent of the bill to sanction virtual moratoriums for railroad companies which are unable to meet their debts, or in other words to permit payments of interest or principal to be postponed for a time without in any way extinguishing or modifying the right to ultimate collection. Such a plan can be justified only on the theory that the railroad company is passing through a temporary period of low earnings which will be succeeded, at no very distant date, by a return to high or comparatively high earnings, for unless this happens nothing will be accomplished except to defer the evil day and make it worse when it finally arrives.

Mr. CRAVEN. May I first continue the point I was attempting to make, and then I will come to that?

The CHAIRMAN. All right.

Mr. CRAVEN. By the way, Mr. Chairman, are you going to put that whole letter in the record?

The CHAIRMAN. I expect to do so.

Mr. CRAVEN. I think it would be well, because there are things in that letter which are significant.

The CHAIRMAN. You may proceed with your statement.



Mr. CRAVEN. Now, Senator Wheeler, the point I was making was this: This bill could not be used for the purpose of a railroad which ought to have drastic reorganization——

The CHAIRMAN (interposing). Why not?

Mr. CRAVEN. I am trying to tell you.

The CHAIRMAN. You are saying that, but you do not get down to the point.

Mr. CRAVEN. You are interrupting me while I am attempting to do the best I can to explain it, and I know it is so because the fact is plainly established. The reason is this: As this report of the committee says—and I am now referring to the report of the House Judiciary Committee—it is not contemplated that any plan of adjustment could be approved by a court for railroad companies where the continued participation of stockholders in the company could be maintained only at the sacrifice of substantive rights of creditors.

The CHAIRMAN. All right; now as to that, you are a lawyer, and you know the report does not necessarily mean any thing, not any more than what was said on the floor of the House.

Mr. CRAVEN. My dear sir, I will say this to you, that we would not have supported this bill had the substantive rights of creditors not received that protection, and had the House Judiciary Committee not declared its intent, that the plan should be so governed.

The CHAIRMAN. What the committee report of the House says does not mean a thing. You as a lawyer ought to know that. What is the use of coming here and arguing to me what the report of the House committee says about it, or what some Representative says about it on the floor of the House? Here is what Representative Chandler said:

> I think it may be possible and quite probable that many railroads now in court in one way or another may be able to work out their problems and then seek relief under this bill if enacted into law. I have the feeling that this bill's usefulness will expand with experience under it.

And he makes similar statement further on.

Mr. CRAVEN. That statement is in no manner contradictory of what I have been saying.

The CHAIRMAN. Well, if it is not I would not be for the bill. If that is your idea of what can be done under the bill, then the bill will never pass in that form if I can help it.

Mr. CRAVEN. What do you mean by "my idea of the bill"?

The CHAIRMAN. What is the use of taking up the time of the committee by reading that report? We want you as a lawyer to take this bill and point out the provisions which say that you cannot do so.

Mr. CRAVEN. I am coming to that.

The CHAIRMAN. There is no use of wasting the time of the committee going round Robin Hood's barn and telling us what is said in the report of that committee. We can read that report for ourselves and will do so.

Mr. CRAVEN. All right; I give you full credit. But I am calling your attention to the essential provisions of the bill, and under which the rights of the creditors are protected, and under which the broad use of this bill which you condemn would be absolutely impossible. If that had not been the provision of this bill, if the bill could be used

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to avoid the reorganization which you and I know ought to occur, we would not have favored the bill.

And now let me call your attention to this: Mr. Berle comes here—in your absence, yesterday—and proposes to strike out that significant language.

The CHAIRMAN. What significant language? What are you talking about? Please call attention to the particular paragraph.

Mr. CRAVEN. I have already called attention to the paragraph, specifically; it is paragraph 3 on page 9. Do you have it before you?

The CHAIRMAN (reading):

(3) That the plan is fair and equitable, is in the public interest, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders.

Mr. CRAVEN. That is right. That language incorporates the principle of the *Boyd case*. It prevents a debtor from coming in here under this proposed statute—in a case where the debtor ought to be excluded from participation in the reorganization because the property is absolutely insolvent in a bankruptcy sense—and making a dicker to be enforced by the court, whereby he scales down the rights of the creditors and retains control of the property without a radical reorganization.

The CHAIRMAN. Do you think that protects you and the stockholders?

Mr. CRAVEN. The Supreme Court has so held.

The CHAIRMAN. But under an entirely different bill.

Mr. CRAVEN. No; not an entirely different bill.

The CHAIRMAN. Oh, yes; there were entirely different provisions in the bill.

And now, certainly, as Mr. Berle said, taking that alone, it sounds fine; but Mr. Berle pointed out that the language, without revision, would establish a fatal precedent in section 77 cases.

Mr. CRAVEN. Yes; but what does Mr. Berle do? He proposes to amend that language to absolutely wreck this act and to make it one of the worst bits of legislation that could be passed. He strikes out that language, and says that the plan should be approved if it is an "equitable composition"—which is precisely the position taken by the attorneys for the Van Sweringen interests, in an effort to break down 77, and which has been resisted and overruled by the Interstate Commerce Commission, and which has been overruled in at least 20 cases where the same issue has been presented to the courts under section 77 (b).

Now, Senator Wheeler, the point I am making is that, under a proper conception of this bill and under the plan in the *Baltimore & Ohio case*, there cannot be a reorganization or adjustment under which the stockholders or the debtor will maintain control of the property at the expense of the creditors, and avoid a radical reorganization by that process. If I remember what you said, it was that there is no control of the matter. We rely on the strength and judgment of the Interstate Commerce Commission to prevent an abuse of this law.

The CHAIRMAN. Well, you cannot do it under this bill, and they cannot do it, and they have so stated in passing on the matter.



Mr. CRAVEN. Well, I was shown that letter by a reporter, here, yesterday; I think it was not any breach of confidence. It was passed around the room, although it was not in the record.

The CHAIRMAN. It was no breach of confidence; of course not.

Mr. CRAVEN. I wanted to make it clear that I did not intend it to be such.

You will note that Mr. Eastman says in that letter that it ought to be made abundantly plain, if it is not already plain, that the Commission when it passes on these adjustments or modifications must pass on whether the plan itself is compatible with the public interest. Now, he had already directed that point to the attention of the House Judiciary Committee; and it is a point with which we agree abundantly. In fact, we agree with Mr. Berle's suggestion that that language should be further amended so that the Commission would be required to find that the plan itself is compatible with the public interest.

The CHAIRMAN. You say that you agree that the Commission should find that the plan should be compatible with the public interest?

Mr. CRAVEN. Let me explain that: The answer is "yes," if there is any doubt about it, on the face of the present language. When that language was amended by the House Judiciary Committee, in executive session after hearings and after receiving the protest of Mr. Eastman—which you will find printed in the hearings of the House Judiciary Committee—it was made to read that the Commission—I am now reading on page 4, line 9——

The CHAIRMAN. Yes.

Mr. CRAVEN. Should make an—

order of the Commission to include also a specific finding that such proposed issuance or modification of securities is in the public interest.

The CHAIRMAN. Yes.

Mr. CRAVEN. Now, we do not see how the Commission—and if we are wrong, the act should be amended—we do not see how the Commission could approve a proposed issuance or modification of securities as being in the public interest unless it also approved the plan as being in the public interest. Consequently we thought that language was adequate.

The CHAIRMAN. Here is what Mr. Eastman says about it. I think there is some question about it; I think there is a serious question about it.

He said [reading]:

We are uncertain whether these modifications of the original language of H. R. 3704 were made to meet the recommendation, above quoted, in our report to the House committee that "if the Congress desires this Commission, in passing upon the issuance of securities under legislation such as it proposed in H. R. 3704, to go thoroughly into the basic merits of the plan of adjustment, this intent should be made clear and specific in the language of the bill." On this point our opinion is divided. One view is that the specific findings which we would be required to make under H. R. 5407 differ so little from those which are now specified in section 20 (a) that they would not enlarge or change our authority and duty. The other view is that the provision for such specific findings manifestly is intended to effect a change and by its emphasis on the "public interest" and the service of the railroad corporation to the public does make it necessary for the Commission to go thoroughly into the basic merits of plans of adjustment. This difference of opinion, however, indicates that the intent is still in need of clarification.

Mr. CRAVEN. Well, there can be no quarrel about that, I think, Senator Wheeler.

The CHAIRMAN. All right.

Mr. CRAVEN. If it is desirable to make that clear, as Mr. Berle suggested, all right; we will go along with you on that.

The CHAIRMAN. All right; but let me call your attention to the fact that yesterday, when it was suggested here that we amend it by saying that the plan be submitted, the attorneys—I think it was Mr. Fletcher--immediately said, "We do not want that language in there, because that would make it impossible for the Baltimore & Ohio plan to go through."

Mr. CRAVEN. Well, I am not responsible for that.

The CHAIRMAN. No; but I am calling your attention to the fact that there is that there now.

Mr. CRAVEN. Let us not get off on side tracks. But if that language should be amended—and probably it is adequate now——

The CHAIRMAN. Do you think it is adequate now, in view of the fact that there is this division of opinion in the Commission itself?

Mr. CRAVEN. I shall not quarrel about that; as I have already said, let us amend it. However, the point, which I am attempting to make, is that if the language is so amended, it does not lie in anybody's mouth to say that there is any danger of this Commission's allowing a lot of bedraggled, top-heavy roads, which ought to have realistic reorganizations, to resist those reorganizations.

The CHAIRMAN. But I say that with the holdings that the Commission has made under 20 (a), and in addition to the fact that they have a divided opinion, there is a very good chance that you will have reorganizations that will not be passed upon by the Commission; and, in my judgment, if it goes through in its present form you will have——

Mr. CRAVEN (interposing). Well, you and I are agreed on the amendment.

The CHAIRMAN. All right.

Mr. CRAVEN. If it is amended, the point I am making is that we trust the Commission to do the right thing; and it puts an end to this proposition that these roads, that ought to have realistic reorganizations, can avoid them by coming under this act. That is what I have been trying to make plain to you for the last 15 minutes.

The CHAIRMAN. All right. When you suggest that you can amend the language in that way, then I think there is something to it.

Mr. CRAVEN. I want to say that the language I was discussing—which sets up the principle of the *Boyd case* and which is the very guts of this bill, because without it the substantive rights of those creditors and stockholders would have protection—should not be amended in the manner that Mr. Berle suggests.

The CHAIRMAN. Well, I am not sure that I agree with Mr. Berle.

Mr. CRAVEN. The reason for that is it seems that Mr. Berle had not thought out where he was going, when he used that language; because in the first place there are no composition principles which pertain to the settlement of, and rights with reference to, any kind of claims which are other than unsecured claims. In other words, the composition principles have had no application, in the past in our law, to any reorganizations or adjustments or creditors' rights, involving bonds or stocks. They have been limited entirely to unsecured creditors. When he put that language in there, to the effect that it should be an equitable composition, he was using language for which there would be no criterion whatever in the law; because in the past the compositions have had nothing whatever to do with secured interests.



I do not think I shall stop, Senator Wheeler, to read from Mr. Finletter's Principles of Corporate Reorganization, where that matter is stated, citing cases, other than to refer to page 25 of his book, as follows—Composition:

> * * * is only a short cut to liquidation whereby the creditors will get by the terms of composition substantially what they would have gotten had the bankrupt's estate been reduced to cash and distributed among them. A composition which does not give to the creditors about the same value as they would have received on an orthodox liquidation will not be confirmed by the court. The right of the bankrupt to offer terms of settlement consisting of his own promises to pay—

and at this point there is a footnote as follows:

> *In re Reiman* (20 Fed. Cas. 490 (S. D. N. Y., 1874), affirmed 20 Fed. Cas. 500 (C. C. S. D. N. Y., 1875). In *Kinkead* v. *J. Bacon & Sons* (230 Fed. 362, 366 (C. C. A. 6th, 1916), certiorari denied 241 U. S. 680, 36 Sup. Ct. 728, 60 L. Ed. 1234 (1916) ), the court said that the " 'consideration' * * * may or may not be cash. A bankrupt usually does not have enough ready money of his own to carry out a composition. The 'consideration to be paid' may be the bankrupt's notes, secured or even wholly unsecured, or his mere promise to pay in the future a given amount."

Then the text continues as follows:

> did create the practical possibility of using the composition as a method of rehabilitation, but even from this practical aspect the composition device is, in the main, useless for reorganization purposes. At the outset it suffered from the 20-year hiatus in bankruptcy legislation in the last quarter of the nineteenth century. The composition died with the rest of bankruptcy in the repealer of 1878, not to be revived until the financial collapse of 1893 resulted in the present Bankruptcy Act of 1898. In this 20-year interval the equity receivership had developed into the standard medium for the reorganization of large companies and was firmly established as such when the composition section again appeared on the statute books. More important, however, was the inherent incapacity of a composition to effect a reorganization of a complicated business enterprise because of the fundamental character of the composition procedure as a liquidation method. Only unsecured creditors are included within its provisions, a limitation which alone would be sufficient to bar its use in the great majority of reorganizations. The fact that the offer of composition may be made only by the bankrupt and the doubt which exists as to whether the terms of composition may include stock as well as bonds or notes—

And here there is this further footnote and citation of cases:

> See Rosenberg, Reorganization—The Next Step, 22 Columbia Law Review 14 (1922). (Note: The Legislative Basis of Corporate Reorganization, 80 University of Pennsylvania Law Review 579, 585 (1932).) The doubt arises from the provision of section 12 (b) (3, F. C. A., title 11, 30) of the Bankruptcy Act (see appendix) that before the confirmation of a composition "the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge."
>
> The cases sometimes cited against the power to include stock in an offer of composition are: *In re Northampton Portland Cement Co.* (185 Fed. 542 (E. D. Pa., 1911)); *In re Prudential Outfitting Co.* (250 Fed. 504 (S. D. N. Y., 1918)); and *In re J. B. & J. M. Cornell Co.* (186 Fed. 859 (S. D. N. Y., 1911)). None of these cases, however, directly involved the question. In the *Northampton case* a large majority of the creditors proposed to purchase the assets of the estate from the receiver and to transfer them to a new corporation in the securities of which the purchase price was to be paid. Authority for this arrangement was sought in section 27 of the Bankruptcy Act (3, F. C. A., title 11, 50) (see appendix), giving the trustee authority to "compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate." As the court pointed out, this section is directed only at disputes in the settling of claims by and against the estate and was not authority for the proposed sale. In rejecting the proposal, the court said that "it should be repeated that the proposed plan is not an offer of composition" (185 Fed. at 543) * * *. The *Prudential case* arose on a motion to set aside a

referee's sale. A creditors' meeting, no notice of which was given to the petitioner, unanimously approved a transfer of the assets to a new corporation, with the preferred stock of which general creditors were to be paid in full, par for par. Although the arrangement was executed and the new company had paid off priority claims in cash in accordance with the plan and incurred liabilities in the conduct of the business, the court set aside the sale. The holding was merely that a sale of the assets cannot be paid for in preferred stock. The possibility of a different result in composition was expressly recognized in the opinion. * * * In the *Cornell Company case* a proposal at the bankruptcy sale to transfer the assets to a newly formed corporation, the creditors to receive 25 percent of their claims in cash or obligations of the new company, was rejected as not being a bid. Although frequently cited as an authority on compositions, this case is also not in point, for it does not follow from the fact that a bid at a sale must be in cash that the same thing applies to an offer in composition.

As against these cases, *In re Woodend* (133 Fed. 593 (S. D. N. Y., 1904)) rejected a composition under which the creditors would receive preferred shares in a new corporation, not because the consideration was improper but because under applicable local law the receipt of the shares would subject creditors who accepted them to liability for the debts of the new corporation. In *York Manufacturing Co.* v. *Merchants' Refrigerating Co.* (168 Fed. 108 (C. C. W. D. Mo., 1909)), the propriety of the use of shares in a composition under section 12 was not even questioned, and in *Kinkead* v. *J. Bacon & Sons* (230 Fed. 362, 366 (C. C. A. 6th, 1916), certiorari denied, 241 U. S. 608, 36 Sup. Ct. 728, 60 L. Ed. 1234 (1916), the court said that "it is common knowledge that compositions sometimes contemplate the taking by creditors of stock or securities under a reorganization."

Despite these latter cases it must be recognized that there is a substantial doubt as to the legality of the use of stock in a composition. It is true that a distinction is made in section 12 between the "consideration" to be paid to the general creditors and the "money" necessary to pay the priority debts and administration expenses. But whether the term "consideration" can be stretched to include stock as well as promises to pay is questionable. The Bankruptcy Act expressly recognizes in section 14 (c) (3, F. C. A., title 11, 32) (see appendix) that promises to pay may be part of the consideration, for it states that the confirmation of a composition shall discharge the bankrupt from all debts other than those agreed to be paid by the terms of the composition. There is no such implication that the term "consideration" includes stock. Further, the concept of the Bankruptcy Act (before the 1933 and 1934 amendments) was that it was intended to effect a liquidation of the properties of the debtor, an object which is wholly inconsistent with the issuance to the creditors of preferred or common stock which would indefinitely postpone their right to receive a cash return with respect to their claims.

Following that, the text concludes the paragraph with these words:

were additional factors which make the composition unsatisfactory for reorganization purposes.

Furthermore, the law seems abundantly established that there is nothing in any composition precedents which would permit what Mr. Berle thinks could happen as a result of the enactment of this proposed legislation if it was so amended; that is, to permit a debtor to come in, under a so-called equitable composition, and make a dicker with the creditors, whereby—after wheedling them down, and thereby avoiding a realistic reorganization—the debtor would be able to maintain his position with respect to the property at the expense of the substantive rights of the creditors; that is, under any composition theory, so far as the cases show, such an arrangement could not be sustained, in view of the fifth amendment and the cases defining the rights of the lien holders.

In that connection I call your attention to Mr. Finletter's quotation on page 399, as follows:

The importance of the composition in the ancestry of the new acts was not at all its value as an older reorganization system, but rather in the fact that it stood as a precedent for the constitutionality of making the election of the majority binding on the minority in insolvency proceedings. It had no value at all as a transmitter of equitable reorganization principles, for the essential quality of the



composition was its capacity to liquidate, not to rehabilitate. But even assuming that the principles governing a composition should control in a bankruptcy reorganization, it is doubtful if those principles would result in a different rule of fairness than that of the old equity standard. There is nothing in the composition cases which indicates that the claim of a senior class of creditors can be scaled down while the bankrupt retains his property or any substantial part of it. The judge may confirm a composition only if he is satisfied that the offer is for the best interests of creditors.

At this point there is a footnote which refers to "Bankruptcy Act, section 12 (d) (see appendix)."

Then the text continues as follows:

If it can be shown that a liquidation of the bankrupt's property in the course of ordinary bankruptcy procedure will yield substantially more than the offered composition, the proposal will not be confirmed against objection.

Here we have a footnote, as follows:

*In re Spiller* (230 Fed. 490 (D. Mass., 1916) ); *Ex Parte Jewett* (13 Fed. Cas. 580 (D. Mass., 1875) ); *Adler* v. *Jones* (109 Fed. 967 (C. C. A. 6th, 1901) ); *In re J. B. & J. M. Cornell Co.* (186 Fed. 859 (S. D. N. Y., 1911) ); *In re Waynesboro Drug Co.* (157 Fed. 101 (S. D. Ga., 1907) ); *Fleischmann & Devine, Inc.* v. *Saul Wolfson Dry Goods Co., Inc.* (299 Fed. 15 (C. A. A. 5th, 1924) ); *In re H. J. Arrington Co.* (113 Fed. 498 (E. D. Va., 1902) ). Where there is a possibility that liquidation in the ordinary course of bankruptcy will eventually obtain a slight amount more than the offer of composition, the offer may nevertheless be confirmed because the creditors may prefer "an immediate payment, as against a postponed and uncertain one, probably of greater amount." This practical exception does not affect the accuracy of the statement in the text. (Cf. *In re Weber Furniture Co.*, 29 Fed. Cas. 531 (E. D. Mich., 1876).)

This paragraph concludes with the following sentence:

The composition device is therefore merely a method of liquidation in which the creditors get all that the bankrupt has, a result which is entirely consistent with the old equity standard of fairness in plans.

You can then see, Senator Wheeler, why, under what we regard as the narrow applicability of this act—recognizing that it is not an act under which the debtor could, were it a topheavy concern, avoid reorganization, and yet scale down the creditor's rights in any way, which would destroy our interest——

The CHAIRMAN (interposing). Of course. I would not agree with you, as a practical matter. I appreciate that the language here, on the face of it, sound fair; but when you have these people coming in and going before a court—and some of these courts—I know what is going to happen, and any person who has been realistic about dealing with the courts know what is going to happen. If you put in the provision, first, that the plan has to be approved by the Interstate Commerce Commission, that is one thing; but if you are simply going to leave this provision on there and leave it up to the courts, then in my judgment you are going to have a lot of scandals in your reorganizations.

By way of summary, let us recognize that a great many people think—and I am not contradicting them—that the plan of the Baltimore & Ohio is a good plan for the Baltimore & Ohio; and, because of the fact that think that is a good plan, they think all plans will be similar. However, that does not follow at all. There may be other plans that will be put up to some of these courts, that will be putrid, as a matter of fact. You have had plans put up, that the Interstate Commerce Commission has approved of—with reference to the St. Paul for instance: The Interstate Commerce Commission approved

of it; and if it had gone through, it would have been in bankruptcy again in 6 months' time.

Now I am not just going to be a party, so far as I am concerned—of course I do not know what the other members of the committee will do—but I am not going to be a party to letting reorganizations go through in a slipshod fashion, with the result that they are going to come back and hit me in the face in a year or 2 years, and say, "Why did you let that bill go through?" and then find that we cannot do anything about it because that is the law, and find that the Interstate Commerce Commission will say, "We cannot do anything about it, because that is the law."

Mr. CRAVEN. Well, Senator Wheeler, do you take your responsibility any more seriously than these savings banks and insurance companies do?

The CHAIRMAN. Yes; because they are looking at it from an entirely different viewpoint. I take my responsibility much more seriously than you do, because you are here as a special pleader; but a Senator is here to represent, if he can, the public interest; and that is the difference between your position and the position of the Members of this Senate.

Mr. CRAVEN. I was not talking about my position; just leave me out of the picture, please, because I am relatively unimportant, but——

The CHAIRMAN. You are representing the insurance companies, and you are a special pleader.

Mr. CRAVEN. The question I asked you was directed to this: You spoke about your responsibility with reference to these rottenly reorganized companies coming back?

The CHAIRMAN. Yes.

Mr. CRAVEN. And you said it would worry you. I should think it would, if it happened; but I do not think it would worry you any more than it would worry them: They are investing, as trustees, fiduciary funds, and I think they are just as responsibile as you are.

The CHAIRMAN. Well, we shall not argue that; but I will say this to you: They have approved reorganizations which have been rotten.

Mr. CRAVEN. Well, we live in a finite world.

The CHAIRMAN. No; we live in a practical and realistic world; and they have approved reorganizations that have been bad, and the Interstate Commerce Commission has approved some of them that have been equally bad.

You are saying, here, that we should approve a bill which, in my judgment, in some respects, would—if it got through without amendment—leave it wide open.

Mr. CRAVEN. No; I am not suggesting that it go through without amendments. I am agreeing as I made very plain, to the amendments.

These insurance companies and savings banks are not asleep at the switch. They are not going along here in a careless fashion, with reference to moneys, that are the security, behind their insurance policies, behind these savings deposits, and which they have invested in a fiduciary capacity.

The CHAIRMAN. Excuse me, please; I must leave for a few minutes. Senator Neely will preside during my absence.

(At this point the chairman left the hearing room.)

Mr. CRAVEN. The thing, I believe, that Senator Wheeler overlooks is this: These debtors cannot get to first base, in putting across a plan under this bill, until they come to us, the institutional investors, first;



they have got to get, in the first place—before they ever go to the Interstate Commerce Commission—the approval of 25 percent of all of the claims that are affected by the proposed modification. The circumstances are such, and the difficulty of getting those consents is such, that they cannot even start a plan without the consent of the creditors. Now, are the creditors going to give away their shirts? Before the Commission can pass on this plan, there must be consent by two-thirds of the aggregate and one-half of each class affected. Then, before the plan can be approved by the court, the plan must have approval of three-fourths of the aggregate and three-fifths of each class affected.

Now who can say, under those circumstances where the debtor must go to the Interstate Commerce Commission and get its finding that the plan is in the public interest—not "compatible with the public interest," but "in the public interest"—How can it be said that there is any grave danger that this statute will be abused? I do not think it will be.

Senator SHIPSTEAD. Are you for the bill?

Mr. CRAVEN. Yes; surely.

Senator NEELY. How many railroads, in addition to the Baltimore & Ohio and the Lehigh Valley, would probably seek protection under this act?

Mr. CRAVEN. That is a very pertinent question, but what you really need is a clairvoyant; and I am not one. Let us be frank. The danger of this bill is the possibility of abuse. Consequently, those who are attacking the bill come here and exaggerate that possibility. The soundness of this bill depends on whether the creditors will do their duty on behalf of those whom they represent, and whether the Interstate Commerce Commission will act according to principle. Undoubtedly there will be an attempt on the part of these roads to avail themselves of this bill; but if the bill is administered according to the law, the scope of its jurisdiction will be limited as the report of the House Judiciary Committee declares it is intended to be limited. They have made it perfectly clear that it is limited to a small group of carriers and that it is not intended as a substitute for section 77.

You ask me how many roads would come under it. I cannot tell you; nobody can tell you. However, the purpose and theory of the bill are perfectly clear.

Senator NEELY. Have you any idea how many could come under it at the present time?

Mr. CRAVEN. I do not think anybody could tell you, because in the first place the scope of the bill is not yet clearly defined. The chairman seemed to have the idea that the roads, generally, who are under reorganization in equity or under section 77 would avail themselves of it. The bill as now drawn excludes the roads that are in section 77; it is not open to them, by the terms of the bill. I would go even further, and before the House Judiciary Committee I did go further than that, and suggested that the roads that are in equity ought to be excluded from its operation.

Now that greatly narrows the possibility of abuse. It leaves the law open only to those roads not now in equity, and not now under section 77, where the Interstate Commerce Commission shall decide that a radical reorganization of the property is not necessary; and,

further, as I was attempting to make clear to Senator Wheeler, the Commission—if this bill stands as it now is and the principles of the *Boyd case* are applicable—could not say that it was in the public interest that a carrier be permitted to avail itself of its provisions, where that company is insolvent in a bankruptcy sense—that is, I mean where obviously the stockholders no longer have an interest in the property. Now, that is the *Boyd case;* and that interpretation of this act is made abundantly clear in the report of the House Judiciary Committee.

Senator NEELY. Have you now in mind any railroads in addition to the Baltimore & Ohio and the Lehigh Valley that you believe should be included in this legislation?

Mr. CRAVEN. I cannot answer that question unless I do so in some very loose fashion because in order to decide whether a railroad is one which should be permitted to come under this act, we are required to know intimately the pending condition of that property and the relative degree of its insolvency.

Senator SHIPSTEAD. I should like to ask a question here: I have not been able to attend the hearing on this bill, because I have had two other committees, and in connection with one of them I happen to be chairman of the subcommittee. We have another bill before us, 1869; and this is 5407. Has anyone stated for the record, in as brief language as possible, the essential differences between this bill and 1869?

I say that because, with this discussion and these questions back and forth, while we are taking testimony, we get a voluminous record—so big that the man who has someting else to do simply cannot read it. I should like to know if there has been a short statement made here, to show the essential difference between this bill and No. 1869.

What is the purpose of this bill? Is this to avoid reorganization, as provided under 1869, and provide some other plan of settlement with creditors?

Mr. CRAVEN. I should be glad to state that as briefly as I can.

Senator SHIPSTEAD. Well, I should appreciate having such a statement, very much indeed.

Mr. CRAVEN. S. 1869 involves comprehensive amendments of section 77 of the Bankruptcy Act, which act was passed in 1933 and amended in 1935, and which purports to set up, and does set up, a thorough mechanism for the reorganization of railroads—a substitute for the old-fashioned equity procedure which was thought to be in certain ways ineffective.

Senator SHIPSTEAD. Yes.

Mr. CRAVEN. This bill, No. 5407, is not in any manner a substitute for that, at all. The reorganizations, attempted under section 77, are expensive; they are damaging to the morale of the company; they result in the putting in of trustees, the breaking up of its administration, and injury to the credit of the company.

Now what is intended by No. 5407 is a simplified process (in no manner intended to be a substitute for section 77, as to roads that really ought to be reorganized). As was made clear by the House Judiciary Committee, there are three kinds of roads: There are those that do not need any reorganization; there are those that are in need of drastic reorganization; and, third—and it is to this class that this



bill is intended to apply—there are those which to quote what the report of the House Judiciary Committee said—"in temporary financial difficulties and requiring temporary relief, but not so involved as to require thorough overhauling of their capital structures."

Thus, a company that is having trouble, but is still sound, can go to the holders of its liens—its creditors—and say, "Now we want you to postpone the payment of maturities and interest for a while. We will protect you. We are not trying to eliminate these payments." Under this simple arrangement, there would be this temporary postponement of payments.

Senator SHIPSTEAD. A moratorium?

Mr. CRAVEN. Well, I do not know what you mean by a "moratorium."

Senator SHIPSTEAD. Well, it is a term that is used for a postponement.

Mr. CRAVEN. Well, it is a postponement. The bill, as you see, is a simpler sort of process. Now, there are people who are afraid that this bill will be abused, because they are afraid that it will permit a road with a thoroughly unsound structure to avoid reorganization.

Senator SHIPSTEAD. Who is to determine whether or not they can come in and whether or not they are entitled to it?

Mr. CRAVEN. That is the point we were considering. I was trying to make clear to Senator Wheeler that there is no danger on that score; because the debtor must get from the Interstate Commerce Commission a finding that this proposed adjustment is in the public interest and that the plan consequently is, from the public standpoint, a sound plan; and there is this other safeguard, that the debtor must get the consent of these very substantial percentages of the creditor holdings.

Senator SHIPSTEAD. The Interstate Commerce Commission first finds whether or not a road that seeks relief here is entitled to come under the provisions of the act—one provision of which would be that it is not insolvent, but that it has a chance to recuperate if it is given postponement?

Mr. CRAVEN. In essence; yes. As we understand this bill, the Commission has got to find that the public interest does not require a drastic reorganization but that the kind of adjustment contemplated by this act is in the public interest. In other words, it is up to the Commission.

Senator SHIPSTEAD. Is it a permission to speculate in futures?

Mr. CRAVEN. Is it a permission to speculate in futures?

Senator SHIPSTEAD. Yes; future recovery and future income?

Mr. CRAVEN. I would not say it was a permission to speculate. I would say it is a permission, if those very substantial percentages of creditors agree—and that is an absolute essential—to postpone for the time being the payment of interest, for example.

One reason why we are interested in this bill is that under 77 as it is administered, when a railroad goes into bankruptcy it quits paying interest to anybody, and we do not get a cent, even though it is earned. Now, under No. 5407 we will not consent to any plan here unless we get our interest so far as it is earned, and unless we are assured that eventually we are going to get what they are not able to pay us at this time; because interest is just as much a part of principal as principal itself; and under this *Boyd case,* to which I

have referred, they cannot deny us our right to take the property if they do not pay us interest.

Now I have just a few additional points, and those I shall state as briefly as I may. In the first place, as I have said, we would exclude from participation under the terms of this act those roads in equity, as Mr. Berle proposed in his amendment on page 2, lines 13 to 14, and the roads under section 77—page 3, lines 19 and 20.

We do not see any reason, under this informal and simple kind of procedure such as I have described, to have any trustee appointed; because we think there is sufficient protection in the provisions found on page 10, lines 11, particularly if those provisions were amended, whereby the plan of adjustment shall contain appropriate provisions protecting the interests of the creditors. We see no reason for any setting up of machinery protecting the matter of the amount of fees and expenses allowable to committees, because we do not understand there will be any fees or expenses allowable. That is a part of the plan that we can control or that can be worked out.

Senator SHIPSTEAD. When a road comes to the Interstate Commerce Commission, that will be the initial step?

Mr. CRAVEN. No; the initial step is to go to the creditors. That is the first step: Get up a plan, and go to the creditors.

Senator SHIPSTEAD. Yes; of course. Then will you have to show that they are in merely temporary financial difficulties?

Mr. CRAVEN. Yes.

Senator SHIPSTEAD. That will have to be shown?

Mr. CRAVEN. Yes.

Senator SHIPSTEAD. Is that provided for in the bill?

Mr. CRAVEN. Yes; that is contemplated.

Senator SHIPSTEAD. Where is that in the bill?

Mr. CRAVEN. Well, that involves the provisions on page 4, and beginning at line 19, at the bottom of page 3.

Senator SHIPSTEAD. Excuse me if I interrupt, because I have another committee coming, and I am trying to find out as quickly as I can.

Mr. CRAVEN. That is quite all right.

Senator SHIPSTEAD. Do you now refer to page 4?

Mr. CRAVEN. Look on page 3 and get the context of it: line 19, page 3: "Any railroad" company shall—I am not reading it precisely—prepare "a plan of adjustment."

Senator SHIPSTEAD. Line 19 (reading):

> Any railroad corporation not in process of reorganization under section 77 of the Bankruptcy Act which, before or after the effective date of this chapter, shall have—
>
> (1) Prepared a plan—

Mr. CRAVEN. Yes; the first thing is to prepare a plan. Then, in line 25, the next thing is to get its approval by 25 percent of the creditors affected—do you see?

Senator SHIPSTEAD. Yes.

Mr. CRAVEN. Then, page 4, paragraph (2): They go to the Interstate Commerce Commission, and they have to get an order—which is stated in line 8.

Senator SHIPSTEAD. On page 4?

Mr. CRAVEN. Page 4, line 8.

Senator SHIPSTEAD. I see.



Mr. CRAVEN. They have to take the plan to the Commission, they have to get it approved, and an order has to be issued.

Senator SHIPSTEAD. Yes. Shouldn't there be some qualifications there, stating that they must show that their financial difficulties are merely temporary?

Mr. CRAVEN. Well, I think that would be an issue that the Commission would have to pass on; because the Commission has got to make a specific finding that this proposed issuance or modification of securities is in the public interest.

Now, it has been suggested here, in my discussion with the Senator—and I agreed to it—that, in the interest of clarity, that language might well be amended so that the plan itself would have to be found to be in the public interest.

Senator SHIPSTEAD. Yes.

Mr. CRAVEN. They could not find that a plan was in the public interest if it were a railroad that ought to be reorganized—considering the public interest.

Senator SHIPSTEAD. Well, would it not be well to make it plain, by putting into the language of the bill the provision that they have to show that?

Mr. CRAVEN. I would not have objection to that. I do not know what the exact language ought to be.

Senator SHIPSTEAD. If they could show that, it would also show that they are not in need of reorganization? Don't you think a showing should be made to that effect?

Mr. CRAVEN. I think that is implied, Senator, by this language as it is.

Senator SHIPSTEAD. Yes.

Mr. CRAVEN. In other words, if this is a railroad which ought to be overhauled thoroughly, then certainly——

Senator SHIPSTEAD. You would have no objection to making it specific? This "legislation by implication" gives a great deal of trouble. We pass a lot of legislation, one year, and we think a lot of things are implied. Then, next year, they say, "You have made a mistake, and they must be clarified."

Mr. CRAVEN. Well, personally I feel that, by implication, the things you have in mind would necessarily be issues before the Commission. I have not thought out how to spell that out.

Senator SHIPSTEAD. Well, you understand what I mean. Would you have any objection to making it clear?

Mr. CRAVEN. No; I would not have any objection.

Senator SHIPSTEAD. That would make a clearly drawn line between the amendments to 77B and this bill.

Mr. CRAVEN. I would have no objection to that.

Senator SHIPSTEAD. All right.

Mr. CRAVEN. Because, as I made clear and as the House Judiciary Committee made perfectly clear, it is not the purpose of this bill to defeat the public interest by preventing drastic reorganizations, where there ought to be drastic reorganizations. Do you see?

Senator SHIPSTEAD. Yes. However, consider the case of a railroad with a great many obligations: Don't you think it would be difficult for the Interstate Commerce Commission to determine whether or not it would have a possibility of returning to a sound basis, over a period of 5 or 10 years in the future?

Mr. CRAVEN. Oh, yes; because I do not see any certainty in the railroad future at all. I agree thoroughly with what Mr. Berle said yesterday.

Senator SHIPSTEAD. Well, I could not be here then. I shall have to read his testimony in the record.

I am asking this to expedite the hearings as far as possible, because I have to go to another committee very soon.

Now please go ahead.

Mr. CRAVEN. When I said that I agree thoroughly with what Mr. Berle said, I do not mean that I agree thoroughly with everything he said. I agreed with what he said as to the imperative need of sound and basic legislation.

I do not know whether you heard him.

Senator SHIPSTEAD. No; I did not.

Mr. CRAVEN. He made it clear, so he said, that there was not a realistic legislative approach to this railroad problem; that on account of political necessities, it was a difficult problem to meet; and he commented upon the consequent uncertainty as to the railroad future.

Now, that is the real trouble with railroad reorganizations. It is not that the law is inadequate; it is not that there is not an adequate mechanism for putting through railroad reorganizations. The trouble is that, this being a highly regulated industry, and the regulation not being thorough, adequate, and complete, there is a great doubt as to the future of American railroads. There is a great group of them—somewhere under 30 percent—that are of such a character that it is very difficult to reorganize them and not have them come back for recurrent reorganizations. In other words, they are repeaters.

Senator SHIPSTEAD. Yes.

Mr. CRAVEN. They are just like—perhaps this is not a very good figure of speech—but they are just like an inebriate who turns up in the police court every Monday morning. The real thing to do is not to put him in jail but to give him stability of character so that he can keep himself straight.

Senator TRUMAN. Some of them have taken the cure, and still it did not help? Is that true?

Mr. CRAVEN. That is right.

Senator SHIPSTEAD. Isn't the trouble with the reorganizations the fact that these railroads have been trying to hang on to a lot of dead corpses, in the form of securities, that never can be liquidated and never can pay fixed charges? They think they can, and so they have a plan; and then they find out that they cannot pay it; they refuse to be realistic?

Mr. CRAVEN. Well, there is a refusal to be realistic by some other people—not only by the owners of securities, who have a natural inclination to hold on to them; but, if I may be so bold, there is a failure on the part of the country to get down to brass tacks and rationalize the transportation problem. In other words, there is the insistence that there be maintained the full measure of competition between railroads, and there is the insistence that there shall not be consolidations and coordinations, but that they shall be required to operate uneconomically a great mass of property which is far in excess of the demands of the communities which they serve—and which the railroads cannot economically operate. Now, there are a large number of such roads; and unless Congress gets down to brass tacks and put through a realistic program of regulation, these roads, however reorganized, will come back for further reorganization; because their instability is an underlying economic instability and not a mere corporate instability. What I am trying to say is that the trouble with them is that they do not have the necessary earning power.



Senator TRUMAN. They just do not have tons of freight sufficient to pay their overhead?

Mr. CRAVEN. That is right.

Senator TRUMAN. And nobody can pay dividends without income from volume of traffic.

Mr. CRAVEN. Of course.

Senator SHIPSTEAD. Do you think the railroads are in worse condition than other industries?

Mr. CRAVEN. Well, I do not know that my judgment would be any good on that. I think they are—yes. In England they consolidated the railroads and made them solvent. On account of politics we are not permitted to do that here.

Senator SHIPSTEAD. Well, we sold out 150,000 farmers in the last 4 years, on foreclosure. Would you be in favor of consolidating the farms of the country, therefore?

Mr. CRAVEN. No, I would not; but I cannot tell you the answer to the farm problem—and you cannot tell me, either, I guess.

Senator SHIPSTEAD. I think I have already told the Senate, and I am very glad to tell you.

Mr. CRAVEN. Well, I have no doubt that your judgment is good.

Senator SHIPSTEAD. Thank you.

Mr. CRAVEN. I am afraid I am using too much time, here.

Senator SHIPSTEAD. Well, I must apologize for interrupting you. However, in the last 15 minutes I have heard the position of those who favor this bill stated to my satisfaction. I think I understand it now; and, if I may be excused, I shall go.

I thank you very much for your statement.

(Senator Shipstead thereupon left the hearing room.)

Mr. CRAVEN. I have just one more point, and I think you raised it, Senator Neely—or, at least, one of the Senators did: Is it possible to pass this bill merely for the Baltimore & Ohio Railroad?

Now, the suggestion has been made that that would be a desirable thing for the Baltimore & Ohio and the Lehigh Valley. They have prepared plans, and the plans have been approved by the Interstate Commerce Commission. The suggestion was made that this bill was passed through the House because it was primarily intended for the Baltimore & Ohio, and that that was the purpose of the legislation. That is not true. It was not intended primarily for the Baltimore & Ohio at all. It was intended to be of general use.

If this bill is good for the Baltimore & Ohio, it also will be good for other railroads similarly situated. There is no reason why it should be limited to the Baltimore & Ohio; and if it is limited to the Baltimore & Ohio, the act will be unconstitutional; because you cannot pass special legislation under the bankruptcy power for the special purpose of protecting someone who happens to be the beneficiary of your good wishes, and thereby exclude other similar people who ought to have the benefit of that same beneficent legislation.

Senator NEELY. What is your response to Mr. Berle's observation to the effect that much of our railway legislation has been enacted for the purpose of solving the problems of particular roads?

Mr. CRAVEN. He was not talking about bankruptcy legislation. I do not think his statement was correct, even as he made it.

However, Senator, here is the trouble about bankruptcy legislation: The Constitution of the United States, in article I, section 8, clause 4, says that—

> The Congress shall have power to establish * * * uniform laws on the subject of bankruptcies throughout the United States.

Now, can anybody say that this bill, if it passed primarily for the benefit of the Baltimore & Ohio and the Lehigh Valley and limited to their use, is a uniform law? I do not care to elaborate on that point; but of course it is obvious that it would not be a "uniform" law because it would be special legislation designed for the benefit of those two properties.

I am not arguing that it ought not to be passed for the benefit of the Baltimore & Ohio. I am arguing that it ought to be passed generally, for the benefit of those railroads for whose good it would be. The point I am making is that if it is passed specially, it will be unconstitutional, under the provision that bankruptcy laws must be made uniform. In support of the proposition that this is the proper interpretation of the Constitution, I cite two cases which are in point and which declare the underlying law: *In re Sink* (27 Fed. (2d) 361) decided in 1928 by the District Court of West Virginia; and *In re Davis* (13 Fed. Supp. 221), decided in 1936 by the Eastern District of New York. Those cases indicate very clearly that special legislation of this sort is—and, I would say, properly—not within the purview of the Constitution.

I wanted to say just one thing else, and that is to correct something which I said yesterday, in language which I did not measure: I said something to the effect that when the receivers or trustees were in control of the property, they were likely to spend their money like drunken sailors on maintenance. That was a statement which was more or less facetious and it was not intended to have the exaggerated effect which perhaps it had. I was merely stating the proposition that frequently, after receivers or trustees are appointed, there is an increase in the cost of maintenance, resulting from the desire to build the property up, and occasioned by the fact that, being free from the necessity of meeting fixed charges, there is money available for that maintenance purpose. I did not intend to indict the trustees or receivers of being as derelict as the unmeasured language that I used indicated.

I thank you very much.

Senator NEELY. Before you leave the stand, let me invite your attention to what Mr. Berle impressively said on the subject of special legislation for railroads. His statement is as follows:

> I believe, however surprising as it may seem, that special acts for the relief of particular railroads are part of the historic policy of the United States. Practically every railroad in the country at some stage or another has had a special act enacted in its favor. Most of the railroads were built under special acts. The railroad structure has not grown on an even, uniform basis. The railroads have been built by act after act after act, as you know a great deal better than I.

You may be correct in saying that he was not referring to bankruptcy legislation.

Mr. CRAVEN. No; he is not talking about bankruptcy. Bankruptcy laws have to be uniform; it is specifically so stated in the Constitution.



Senator NEELY (presiding). Thank you.

Does Colonel Anderson or Mr. Willard wish to proceed?

Mr. ANDERSON. I think there are some others who desire to be heard.

(At this point Senator Wheeler, chairman of the committee, returned to the hearing room and resumed the chair.)

Senator NEELY. Mr. Chairman, we are endeavoring to determine who will be the next witness.

Mr. ANDERSON. I should be glad to state what I have to say after Mr. Willard has finished.

Mr. WILLARD. I shall need only 5 or 10 minutes to say what I have in mind, Mr. Chairman.

The CHAIRMAN. Very well, Mr. Willard, we shall be glad to have you proceed now.

## STATEMENT OF DANIEL WILLARD, PRESIDENT, BALTIMORE & OHIO RAILROAD, BALTIMORE, MD.

Mr. WILLARD. It has seemed to me, as I have listened, that there has been a great deal of talk about the technical difficulties of a certain thing, but very little consideration of the thing itself. I am interested only in the thing itself. I have no interest at all as to how it ought to be written and explained, and all that sort of thing, if it can be properly explained at all, so that Congress will be satisfied. I leave those technical matters to the lawyers.

I have been president of the Baltimore & Ohio Railroad for 30 years. I am familiar with its conditions. I have been, fortunately, supported by a capable board of directors; and if the management of the property has been bad, I am responsible, and nobody else. I can speak freely and fully concerning what has happened.

During that period more than $480,000,000 has been spent on the property itself, for equipment, larger tunnels, third tracks, and all the things that make up a great railroad; and it has been done in order to meet the public requirements. It has not been an eleemosynary proposition: We have hoped that the people who put their money in would receive a proper return.

The first day I entered my office as president of the Baltimore & Ohio, a group of citizens from West Virginia—and perhaps Senator Neely was one of them; I have forgotten—came there to see me, to demand that the first thing that I should do would be to increase their facilities to ship their coal out of Fairmont—not only what they were mining at that time but what they were expecting to mine. In other words, they wanted us to prepare, so that they could increase their business; and that was pretty nearly the situation for a good many years. It was more or less so on other railroads. We were in a period when things were growing, and we were expected to prepare for the future, as well as for the day's requirements.

Since I came to the railroad in 1910—and responsive to that feeling of the necessity of preparation for future business—we have spent nearly $500,000,000 improving the road, and somewhere around $100,000,000, I suppose, in the purchase of stocks in other railroads that were to become a part of the Baltimore & Ohio system, under the

consolidation plan adopted by Congress and approved by the Interstate Commerce Commission—which I wish to say I never favored, because I think that consolidation is a healthy matter up to a certain extent—it has given us such properties as the Santa Fe and the Northern Pacific, the North Western, the New York Central, and the Pennsylvania; they are the result of consolidation. There has been an idea of carrying the consolidation so far that, I think, the result would be harmful. I was never keen about it. I thought the Baltimore & Ohio was about big enough.

However, we had to go along with that movement; we were a part of the movement. We spent money to buy the control of other railroads or buy an interest in them; and all of the arrangements that we made, as to price and conditions, were approved by the Commission. I may say that it is a fact that the money that was spent for the purchase of stock of other companies was raised—or its equivalent raised—by the sale of Baltimore & Ohio stock; so it may be said that the arrangement, as of itself, did not impose an increased fixed charge upon the railroad; we have been paying no dividends on our stock since 1931. However, the point I wish to make is this: We have spent upward of $600,000,000, and I have recommended all of it. How much people were influenced by my recommendation I cannot tell; but I feel responsible for my own recommendations. We earned our fixed charges fully for nearly 40 years. In 1938 we failed to earn them by $13,000,000. Up until that time, every year we had practically earned them; and when I say "practically," I mean that by little adjustments which we might have made, we could have made it appear—and honestly appear—that we did earn our fixed charges, by not spending quite so much for something else that might have been postponed. I feel justified in saying that we have paid our fixed charges for nearly 40 years, under conditions as they existed.

If I felt that the conditions in effect today—which nearly everyone speaks of as a depression—were to continue and that we were going to have a situation with 10 or 12 million men out of employment all the time, from now on, I should say, "Why, put the Baltimore & Ohio in receivership, and reorganize it;" and I might extend my recommendation very much wider, because I should think that the basis we have been working on could no longer be defended.

However, I do not believe anything of the kind. I do not believe that the basis of our industrial activity today is a permanent gage for the future. I have not lost confidence in the United States; and because I do believe that we are going to recover from this depression just as we did in '81—and I might say that at that time I personally was not responsible for the loss of anybody else's money, but I did lose my own job, when we had a depression similar to the present one but not so severe—but I have been through '81 and 1907 and 1914 and after the war. At those times it looked as if the railroads would never be worth anything again; and yet they did come back, every time, and have been better than ever before; and I expect that the railroads are going to come back, again. I have the utmost confidence that the Baltimore & Ohio will be able to pay its present—not its reduced—but its present full fixed charges and resume the payment of dividends after a time, when business gets on a little better basis.



I am certain that business is going to get on a better basis; because we all want it and there was never such unanimous desire and effort before to bring about better conditions. I know that Members of Congress are deeply interested, and they are seeking to do what they can to help the situation. It certainly will not all have an adverse effect. And, with our population increasing as it is and with the kind of country we have, rich in every natural resource, it must be that we shall again go forward. That is the basis of my desire to see some such plan as is worked out in H. R. 5407—the net result of which will be, so far as the Baltimore & Ohio is concerned, that it will permit us, with the cooperation of our bondholders, to carry through a reasonable period without loss to them, and get back on the conditions that obtained before the depression in 1929.

Mr. Chairman, 85 percent—more than 55,000—of our bondholders have indicated tneir willingness that we should withhold some or all of their interest for a period of time, in order that we might get through this temporary difficulty. We do not want to borrow any money from the Government. We do not want any money from anybody except from those who have already put their money in the Baltimore & Ohio Railroad and have indicated their willingness to postpone their interest for a time in order that we may get through and in order that we may save what I feel is not only the great expense of a reorganization but what would seem to me as a real and personal disgrace, if I let the property get in that condition.

We have also said to them—and this is not in the law, but it is a part of our plan: "If you will do this, we will agree that before we pay dividends and before we go on the basis obtaining before the depression, we will arrange to pay off $100,000,000 of our fixed debt, so that to that extent we shall be less likely to be embarrassed in the future."

Now, that is the plan that I am anxious to carry out. That is the plan that our stockholders are willing that we should carry out. That is the plan that 55,000 of our bondholders are willing that we should carry out; and, so far as I can learn, it has the approval, I think, of a very substantial number, if not all, of our 40,000 employees. That is what I wish to accomplish with the Baltimore & Ohio.

It would rather seem to me that undue emphasis was placed upons the Baltimore & Ohio, rather indicating that there was not any other hard-up railroad in the country. Perhaps there is not. However, that is where we are, and I believe we can work it out.

The CHAIRMAN. Unfortunately, there are a lot of them.

Mr. WILLARD. If we fail to make the effort and if it should come about, in 2 or 3 years, that conditions were again good, I should feel that I had been criminally negligent, if I had neglected to do everything possible to save them their investment—and I believe it can be saved.

If we should fail, under the terms of this act, why, reorganization is still ahead of us.

Just one further word: I do not think of this act, and what we propose to do under it, as reorganization. It is an honest effort on our part to avoid reorganization. Were reorganization desired, we already have section 77, and certainly it would be much easier for me to have said, "All right, let us go under that law, and let things work as they will." It is going to be a hard job to work out our salvation under this law, if passed as it is, and as I venture to hope it may be; but if

it is done, I am sure we can save a charter that was granted over 100 years ago, we can save our security holders from large losses, and keep clear the record of the Baltimore & Ohio Railroad.

The CHAIRMAN. Very well, Mr. Willard; thank you.

The CHAIRMAN. I understand that Mr. Weiner will be the next witness.

**STATEMENT OF JOSEPH L. WEINER, SPECIAL COUNSEL, REORGANIZATION DIVISION, SECURITIES AND EXCHANGE COMMISSION, WASHINGTON, D. C.**

The CHAIRMAN. Mr. Weiner, you are with the Securities and Exchange Commission?

Mr. WEINER. That is correct.

The CHAIRMAN. And you are a former assistant corporation counsel in New York City, in charge of utilities?

Mr. WEINER. That is correct.

The CHAIRMAN. And chief counsel for the Board of Transportation of New York?

Mr. WEINER. That is correct.

The CHAIRMAN. At present you are special counsel on reorganization, for the Securities and Exchange Commission?

Mr. WEINER. Yes.

The CHAIRMAN. We asked the Securities and Exchange Commission for a statement with reference to this legislation, as you understand I presume.

Mr. WEINER. That was my understanding, and I was directed to appear here in response to that request.

The CHAIRMAN. All right.

Mr. WEINER. I believe that a communication from the Commission has already been made part of the record; I am informed that that is the case. That communication states much better than I could, verbally—or perhaps otherwise—the views of the Commission with respect to this bill. That is the statement which you requested.

As you note from the communication, the Commission does not undertake to pass specifically with respect to any railroad problems. As you know, the Commission has no jurisdiction with respect to railroad reorganization. It does have jurisdiction in a number of ways, with respect to the reorganization of other corporations; and back in 1934 Congress directed it to make a study of the operation of corporate reorganizations generally. That study was conducted under the direction of William O. Douglas who, I believe, first came to the Commission as director of that study, and continued to supervise it later, as a member of the Commission, and as chairman.

The results of that study have been reported to the Congress in seven portions of a rather elaborate report, of which the eighth and last portion is shortly to appear. Probably as a result in large part of the recommendations and information contained in that report to the Congress, there were enacted last year the amendments to the Bankruptcy Act, which substituted for section 77 B what is now chapter 10, which is the statute under which corporate reorganizations, other than railroads, are now being conducted. In that legislation certain rather substantial functions were imposed upon the Securities and Exchange Commission. Therefore, in addition to the study that was preliminarily made by the Commission, the Securities and Exchange Commission now has the experience derived from participating in the actual corporate reorganizations under the amended Bankruptcy Act which went into full effect last September.



In addition to that, the Commission of course has had, under the Public Utility Holding Company Act jurisdiction over reorganizations of Public Utility Holding Companies generally and of their operating subsidiaries as well, so that the Commission has for a number of years been actively participating in the consideration of plans of reorganization.

The Commission's opinion, as expressed in its communication, is based simply upon general principles which the Commission believes are applicable to all reorganization problems, although of course there may be special considerations as applied to a particular industry or, for that matter, there may be special problems, as applied to any particular corporation. The Commission has never advocated a uniform plan of reorganization, so far as I know—a pattern to which every enterprise in financial difficulties must conform; but it has recognized that certain general principles relating to corporate reorganizations do exist and ought to be recognized and enforced, regardless of the type of enterprise.

The Commission's conclusions, after a study of the bill, as requested by your committee, are that the bill should not be enacted; and the Commission has so advised your committee, in the communication to which I referred, and which is part of the record.

I do not know that there is anything which you would care to have me comment upon specifically or add to what I have already stated. I should be glad to do what I can.

The CHAIRMAN. Did you, yourself, make a study of the bill?

Mr. WEINER. Yes; I studied the bill.

The CHAIRMAN. In the letter from the Commission I notice it is said [reading]:

> Perhaps the most pressing need by the courts in reorganizations has been for full and unbiased information and advice, and for administrative and expert assistance. Mr. Justice Douglas, then a member of this Commission, discussed the matter as follows before the House Judiciary Committee, in testimony supporting the enactment of the present chapter X of the Bankruptcy Act (H. Rept. No. 1409, 75th Cong., 1st sess., p. 38):
>
> "With this system in operation, the courts could do very little. They could offer investors and creditors little protection. They were crippled by a reorganization system which was based upon the theory that reorganization was a procedure wherein the legal matters were left to the court; the business matters to the reorganizers. Obviously reorganization is not strictly a legal problem. It is a business and administrative matter of great complexity. And even though the courts wanted to exercise a broader conditioning influence over the whole process, they frequently were in no position to do so, since they did not have nor were they in a position to get the facts."

Under the bill as at present drawn, is it your view, and do you take the same view that the Commission takes, that they have really no authority to pass upon the plan?

Mr. WEINER. Well, as it happens, we covered that point, which you will find on page 7 of the communication, in the form in which you are holding it, Senator. What we said there was this [reading]:

> Unquestionably, the accomplishment of sound financial structures is a primary purpose of reorganizations. It may appropriately be indicated in this connection that the proposed legislation does not in terms require that either the court or the Interstate Commerce Commission be satisfied that a plan submitted under

H. R. 5407 meets this requirement. We are not confident that the findings which are required to be made adequately furnish a substitute. It seems to us that this matter is of such importance that it should be placed beyond question.

Now, I noted in the discussion this morning, and also somewhat earlier, that the Interstate Commerce Commission, while possibly divided upon the subject, has raised precisely the same question.

The CHAIRMAN. That is correct.

Very well, Mr. Weiner; unless there are some further questions, I believe that covers the matter—with the letter that is in the record.

Do you wish to ask any questions, Senator Neely?

Senator NEELY. No; thank you.

The CHAIRMAN. All right, sir.

Colonel Anderson, please.

## STATEMENT OF HENRY W. ANDERSON, ATTORNEY, RICHMOND, VA.: SPECIAL COUNSEL FOR THE BALTIMORE & OHIO RAILROAD CO.

The CHAIRMAN. Very well, Colonel Anderson, please proceed.

Mr. ANDERSON. My name is Henry W. Anderson, of Richmond, Va. I am a lawyer, and counsel for the Baltimore & Ohio Railroad Co. in the matter of the plan of modification of the interest charges and maturities, dated August 15, 1938.

Mr. Chairman, I shall be very brief. The purpose of my discussion is not to go into technical details of this proposed legislation but, rather, to clear up some points on the record, which I think should be cleared up, and also to place in the record the Baltimore & Ohio plan and certain matters in relation thereto, so that the committee will be in a position to know the facts about that plan from the record, if they desire to consider this bill with reference to the limitations which have been indicated.

In reference to the original bill, the chairman has asked about the genesis of the measure. I think it is due those who are proponents of the bill—Judge Fletcher is not able to be here today—for me to say that legislation of this character has been under consideration since last summer. I think I originally proposed it, by appearing before the law committee of the Association of American Railroads. The law committee drafted a bill and submitted it to the association, and Judge Fletcher asked my assistance in perfecting it in certain particulars. I did work some on it, and, so far as I know, there are no provisions in the bill which were not inserted by Judge Fletcher or at my suggestion—Judge Fletcher receiving suggestions from the Security Owners Association, which Mr. Craven represented, and possibly also some banking and investment interests in New York. The bill was entirely prepared in that way. It was not drafted by any counsel for any bankers, nor did they have any part directly in the drafting, so far as I know.

The CHAIRMAN. Quite frankly, Mr. Anderson, I have no objection to any bankers drafting any legislation.

Mr. ANDERSON. I understand. However, I felt it due Judge Fletcher, because he is absent, and myself also, to make it clear that we are responsible for that.

Also I should like to say that I spent the first 5 years of my business life in the railroad business, to learn the business before studying law.



Since that time I have, with the exception of the years when I was abroad during the war, been busy with railroad matters. From 1924 to 1926 I devoted all of my time, except what I gave to the Government, to fighting the so-called Van Sweringen consolidations. After that, as you know, I opposed the St. Paul reorganization plans of 1926, representing a committee of bondholders before the Interstate Commerce Commission.

For the past 7 years I have been engaged, for practically all of my time, in railroad work and, among other things, the railroad reorganizations. I have been profoundly impressed with the expense and delay involved in railroad reorganization, and I have felt that there should be some solution of the problem—for some companies, at least—other than the very expensive and complicated procedure now employed.

It occurred to me that if we could apply our experience in other lines of business to this railroad problem, where there was not such an overwhelming capital structure as to require drastic reorganization, we might learn something. In business I have had to deal a great deal with problems of this character, and have worked out a number of cases where firms which became embarrassed during periods of depression, went to their creditors and secured time on their obligations and were given time either to liquidate certain of their obligations or work them out on a business basis; and they always succeeded in doing it. They have never failed yet. I thought the principle might be applied to certain railroads—not to all those requiring drastic reorganizations but those which did not require such action. I want to say that there never was, so far as I know, any intention, in connection with this bill, that railroads in 77 should be taken out and put under this bill. I do not think this bill will do that; but if it will do that, then it may be amended to prevent this being done.

The only thing is that it occurred to us that in some cases there might be a period of some months between the time when the company had proposed a plan and the time when the necessary assents could be secured, since it takes a long time to get the assents from a company's security holders. Therefore, in some instances it might have been necessary—and might have been necessary for the Baltimore & Ohio, except for the unusual following which the security holders gave it—to put it temporarily in receivership, while they were working out the plan. That is why the receivership provision was put in there. It may have been too broad and created the wrong impression; and therefore we are perfectly willing to have that portion amended in any form that is suggested; because we will take the risk of the Baltimore & Ohio's not going into receivership. So if desired, I shall cooperate to the maximum with the committee in shaping these provisions so that no company in 77 can come under this bill and so that no company in receivership can come under this bill.

The CHAIRMAN. I understand that you have worked on some railroad matters in this connection.

Mr. ANDERSON. Yes; that was our intent, but probably we did not draw it as we should.

Now, one comment as to the Commission: Under the law, as I understand it, the Commission has power to pass upon all matters in relation to the public interest, affected by this bill. I may be wrong, Senator; I am not dogmatic; I have practiced law too long.

However, the Commission held, on my very earnest argument in the *Nickel Plate cases*, that even the treatment of security holders was a matter of public interest. Certainly provision for proper financing current requirements of the railroad is a matter of public interest; that is, the provisions for capital expenditures during the period of the plan are certainly a matter affecting the public interest, because that involves the operation of the railroad, and a public service.

The Commission held, as I now recall—although I have not examined the decision recently—in the St. Paul case that the interests of the security holders constituted a matter that affected the public interest. How broad they would make that, they must determine.

With respect to the Commission's activities as to matters affecting private interests the distinction is here made much along the line of your bill No. 1869. Matters affecting private interests or between themselves are matters which should be passed upon by the courts, because they require the adjudication of private rights, and the Commission cannot do that. Commissioner Splawn made that very clear in his testimony—which I read with great interest.

Therefore, the purpose was to make the distinction, and the language of this bill as originally drawn was intended clearly to give the Commission that power, and the broadest possible power, as to any matter affecting the public interest, and then to follow the language of subsection 20 (a) of the Interstate Commerce Act, as to its findings, which language is very broad, as to what is a matter of the public interest. I do not go into the details; you know the language, thoroughly.

The CHAIRMAN. Unfortunately there have been, in the past, in some of these railroad reorganizations, as you know, practices and chicanery that went on, that makes us feel that we have to be more careful in writing the law; and sometimes it makes it more difficult for the honest railroad, when we are trying to protect the public interest, with reference to some of these other people.

Mr. ANDERSON. Yes, Senator; I am entirely in sympathy with your desire to do that; but I want to make it entirely clear with reference to that matter, as affecting the purpose of this bill.

In the second place, Mr. Berle suggested that there were certain jokers and matters of intent in the bill which were not manifest on its face. On behalf of Judge Fletcher, who authorizes me to say it, and of myself, I want to say—although I do not think it necessary—that there is not the slightest foundation for any such suggestion. Those clauses referred to were drawn by us. They were offered to meet the wishes of the investors, as to what they wanted the findings to be. We all are opposed to any ulterior "intents" or "jokers" and we are ready to accept all suggestions that will make it clear. This bill has nothing to do with reorganization. It is a bill of adjustment to avoid reorganization, instead of to accomplish such action. Therefore, a finding under or decision on this bill would have no bearing on section 77.

I wish to say further that it was intended to be limited to those corporations that the Commission found could carry out a plan of adjustment instead of requiring reorganization; it was intended that the Commission should find that the condition of the property was such that the company had substantially earned its interest charges in a later period of years. For instance, let us use the Baltimore & Ohio as an illustration: The Baltimore & Ohio has earned its interest charges throughout the depression, except in 1938, taking the aver-



age earnings of the last 7 years. In some years it has gone a little below, and in some a little above; but for the average it has substantially earned its interest charges. Now it proposes to convert more than one-third of that interest into contingent interest. The company and its creditors are willing to do that. Therefore, it is a perfectly sound plan, with a 50-percent margin over fixed charges, on the basis of its earnings during the 7 years. That is what we had in mind; that a company that had substantially earned its interest charges in the last number of years could then, under this proposed act, make the effort to avoid drastic reorganizations by an adjustment with its creditors. If it failed, nobody would be worse off than before, because they would have the same liens. If it succeeded, then everybody would be better off.

Now, that was the theory of this bill. Whether we were felicitous in expressing it is not necessary for me to discuss.

The second point with respect to which it was stated we had a "joker," was with respect to where you stamp the coupons, when you pay them in part, with the amount and circumstances of the payment. It so happened that Mr. Clay, of the R. F. C., called my attention to that the day before the hearing. I said, "If that is capable of any such interpretation, strike it out"; and I had made a notation in my papers, here, to strike it out. Under that plan, you would stamp the amount. It might be paid under the plan or under other circumstances. You could then not say you paid it under the plan or paid it with certain conditions. I said, "I do not want any misunderstanding. Strike out the 'amount and circumstances,' and just say, 'show the payment.' "

Senator NEELY. Then you are willing to accept Mr. Berle's amendment?

Mr. ANDERSON. Not only that, but I had suggested it myself, and with the intent of meeting the objection stated. It never occurred to us that it was capable of such interpretation as has been suggested and we do not think so now, but we are perfectly willing to amend it.

I wish to say that what I had further to say regarding the bill in its original form, I have said before the House committee, and I do not want to go over it again; I suppose all that is before this committee.

The CHAIRMAN. That is right.

Mr. ANDERSON. I still hold the views then expressed. I do not want to repeat that.

In the second place, I want to discuss the Baltimore & Ohio situation. With your permission, I should like to offer for the record, first, the Baltimore & Ohio plan, so that you will have it for your use. This is a copy of the Baltimore & Ohio plan, with all of the communications to security holders, and I offer this for the record, so that you will see exactly what the Baltimore & Ohio did in getting this plan out.

(The documents above referred to are as follows:)

PLAN OF THE BALTIMORE AND OHIO RAILROAD COMPANY FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938

(Including Buffalo, Rochester & Pittsburgh Railway Company, Buffalo & Susquehanna Railroad Corporation, and Cincinnati, Indianapolis & Western Railroad Company)

I. INTRODUCTORY STATEMENT

In every year from 1900 to 1931, inclusive, the Company (including operated subsidiaries) earned then existing fixed charges. Such charges were earned in 1933

and 1936, but the Company failed to earn such charges (after depreciation) by $6,334,978 in 1932, $3,825,752 in 1934, $3,180,909 in 1935 and $720,695 in 1937.

The present fixed charges on the funded debt of the Company and the subsidiaries now operated by it aggregate $31,421,742 a year. During the seven-year period from 1924 to 1930, inclusive, the combined earnings of the Company and such subsidiaries averaged $54,891,668 a year available for fixed charges, or $23,469,926 more than such present charges. During the seven-year period from 1931 to 1937, inclusive, such combined earnings averaged $31,838,943 a year available for fixed charges, or only slightly more than such present charges.

The acute recession in business which developed in the latter half of 1937 resulted in a severe decline in the Company's gross operating revenues. The effect of this decline was especially critical because of recent large increases in operating costs. Wages were increased in the summer and autumn of 1937 by approximately 7.34%. Cost of fuel, materials, and supplies have also materially increased. Large new taxes have been imposed. Rate increases recently made effective are not sufficient fully to offset these additional burdens.

As a result of this concurrent decline in revenues and increase in operating costs, the latter arising from causes largely beyond control by the Company, earnings available for interest during the first six months of 1938 were $11,741,308 less than fixed charges for that period. During most of that period, the rate increases above referred to were not in effect. In view of the rate increases now effective, and the customary seasonal trend of the Company's business, it is now expected that the earnings for the second half of the year will be better than those for the first half. The deficiency for the first eight months of 1938 was $12,864,962 and for the entire year 1938 may amount to more than $14,000,000.

Since 1931, the Company has been required to meet maturities of its funded debt aggregating $172,585,700. Most of these maturities have occurred at times when the securities markets were so depressed as to make payment or refunding by ordinary means impossible. Under these conditions it became necessary for the Company to borrow substantial amounts from Reconstruction Finance Corporation (hereinafter called R. F. C.). The present indebtedness of the Company to R. F. C. aggregates the principal sum of $87,685,578, including $13,490,000 of the 4½% Secured Notes of 1939 and $1,424,000 of P. W. A. Equipment Obligations acquired by R. F. C. Excluding such Notes and Equipment Obligations, over 80% of such indebtedness was incurred to provide for such maturities.

In spite of these adverse conditions, the Company has met its maturing obligations and interest charges and the properties of the Company have been maintained in condition to assure safe and adequate service.

The Company, however, cannot continue to meet its present fixed charges and to improve and maintain its facilities in the public service if the conditions and earnings experience of the last seven years are to endure. While it is believed that present conditions will not be permanent, no material relief is apparent in the immediate future. In the next four years, 1939–1942, inclusive, the Company faces maturities aggregating approximately $185,000,000, including 4¼% Secured Notes in the principal amount of $50,000,000, Pittsburgh, Lake Erie & West Virginia Bonds in the principal amount of $43,182,000, Notes held by R. F. C. in the principal amount of $72,771,578, equipment trusts and certain smaller maturities of the Company and its operated subsidiaries.

In these circumstances, it is essential that by some means fixed interest charges be reduced, at least for such time as will provide a reasonable opportunity for reestablishment of earnings and credit, and that suitable provision be made for nearby maturities.

To accomplish these purposes, the Company could initiate proceedings for reorganization of its capital structure under Section 77 of the Bankruptcy Act. Experience, however, indicates that such proceedings would be long and expensive, with resulting confusion and losses to security holders, and might result in a total suspension of all interest payments for an indeterminate period. On the other hand, with the cooperation of the security holders the Company may make modifications of interest charges and maturities by voluntary agreement with the security holders. This alternative seems so clearly in the interest of the security holders and the public that the Company feels a duty to propose and endeavor to carry out a plan for such voluntary modifications whereby the security holders may obtain the benefits of a prompt and orderly adjustment. Prompt acceptance of the accompany Plan by substantial majorities of the affected bondholders will make its effectuation more simple and speedy, even if it should finally become necessary to invoke proceedings under Section 77 or otherwise in order to effectuate the Plan as to nonassenting minorities.



The accompanying Plan has been prepared with the above objects in view. It does not contemplate any reduction in the principal amount of existing obligations or disturbance of their existing liens. The three large nearby maturities (4½% Secured Notes of 1939, P. L. E. & W. Va. 4s of 1941 and said $72,771,578 of Notes of 1938–1942 held by R. F. C.) and a small maturity of the Buffalo, Rochester & Pittsburgh (L. P. & C. 5s of 1939) are to be extended. Fixed interest is to be payable on the extended Secured Notes at 4%, which the Board of Directors believes to be a fair rate in view of the reduction of fixed charges under the Plan and the short term of the extension. Interest is to be continued at present rates on all other debt, except to the extent that recent experience indicates that it should be changed to a contingent status. The interest to be made contingent is part or all of the interest for the next eight years on four issues of bonds of the Company, namely:

(1) All funded debt interest not secured by lien. This includes 1% on the First Mortgage 5% Bonds, 1½% on the Southwestern Division Bonds, and all interest on the Convertible 4½% Bonds. There are no other interest obligations of this character.

(2) 80% of the interest charges on the Refunding Mortgage Bonds. These Bonds are the junior lien of the system. In the judgment of the officers of the Company the lien position of the respective underlying mortgages (i. e., mortgages under which bonds are outstanding in the hands of the public secured as to railroad properties or equipment of the Company by a lien senior to that of the Refunding Mortgage) and the earnings which the properties subject to such underlying mortgages contribute to the system fairly support their present secured interest charges, and accordingly no modification of such charges is proposed in the Plan. 20% of the interest charges on the Refunding Mortgage Bonds will remain as fixed interest, that being the extent to which on the basis of present earnings it is believed that the Refunding Mortgage Bonds participate in the return from such underlying bonds through pledge thereof as collateral under the Refunding Mortgage or in the earnings of terminals through pledge of their securities as collateral under the Refunding Mortgage. Aside from such pledged collateral the lien of the Refunding Mortgage (except for a first lien, direct or indirect, on about 6 miles of cut-off line and on about 408 miles of branch line which the officers of the Company believe to have no significant net earnings) is only a junior lien, direct or through pledge of other collateral, on most of the railroad properties and equipment of the Company. The surplus earnings, if any, of such properties (any excess over requirements for secured interest on said underlying bonds would be allocable to the Refunding Mortgage Bonds as the junior lien) are not ascertainable without prolonged statistical studies, the results of which, in view of the numerous factors involved, would not, in the opinion of the management, be conclusive. Accordingly, the fixed interest proposed on the Refunding Mortgage Bonds is based solely on their pledged underlying and terminal collateral without allowance for their existing junior lien. The junior lien of the Refunding Mortgage Bonds is, however, recognized by giving them under the Plan a first call on all earnings available for interest which is contingent at the time on earnings, *pari passu* with relatively small amounts of bonds having a first lien on some or all of the properties of the three operated subsidiaries below mentioned.

and on two issues of bonds of operated subsidiaries, namely:

(3) Part of the interest charges of two operated subsidiaries (namely 40% of the interest charges on the C. I. & W. Firsts and 33⅓% of the interest charges on the B., R. & P. Consolidateds). Since the properties of these two companies (and also of the Buffalo & Susquehanna) are operated by the Company and no separate earnings statements are kept, any effort to segregte the separate earning power of such respective properties involves the difficulties referred to above. The treatment of the bonds of all three operated subsidiaries (B., R. & P., B. & S. and C. I. & W.) has accordingly not been based upon any statistical studies for the segregation of earnings, but solely upon the judgment of the officers of the Company as to what treatment is fair to all interests concerned, consideration being given to the respective earnings experience of such subsidiaries prior to the unification of operations, existing traffic conditions, the relation of the properties of such subsidiaries to the system as a whole and other relevant facts.

Interest on the above bonds maturing after said eight-year period will not be modified by the Plan. No funded debt of the Company or its subsidiaries except those issues named hereinabove will be modified by the Plan, except that the sinking fund of the B. & S. First Mortgage Bonds is to be modified. No modifications are to be made in any securities of the Company or its subsidiaries except as provided in the Plan.

Interest made contingent under the Plan is to be payable (in the order stated hereinafter in the Plan) if and to the extent that it may be earned after deductions for the Capital Fund hereinafter referred to and after a deduction in 1939 only of not exceeding $10,000,000 to provide for necessary working capital. Such interest will be fully cumulative and must be paid in full before provision for any dividends and in any event, whether earned or not, at or before the maturity of the respective issues. Since it is obviously essential to the public service and in the interest of all security holders that adequate funds should be provided out of earnings to supply capital improvements necessary to maintain the property as an effective transportation agency, a Capital Fund for this purpose of not exceeding 2½% of total operating revenues is proposed and provided for in the Plan while any obligations for contingent interest remain outstanding, to be deducted from earnings after fixed charges but before contingent interest. Interest maturing after such eight-year period will not be modified by the Plan.

The Plan also provides that, so long as any obligations for contingent interest remain outstanding and in any event until $100,000,000 of obligations (of any class or classes secured by lien, except equipment trust obligations) shall have been retired through the Sinking Fund, a substantial Sinking Fund shall be set up out of any surplus earnings, after providing for fixed charges, Capital Fund and contingent interest and after said deduction (in 1939 only) to provide for necessary working capital. The Sinking Fund is to be applied to reduce debt, to provide adequate working capital, and for capital expenditures. It is also provided that those bonds all or the greater part of whose interest is made contingent (Refunding Mortgage Bonds and Convertible 4½% Bonds) shall be given the right to convert their bonds into Common Stock of the Company at $100 per share.

Under the Plan, if effected, the bondholders will continue to hold their existing principal obligations of the Company and the appurtenant interest obligations maturing after the eight-year period of contingent interest. During the eight-year period of contingent interest the bondholders will have reasonable assurance of receiving the interest which remains a fixed charge under the Plan; they will also be entitled to receive the remainder of their present interest, if and when it is earned after the aforesaid deductions to provide for the operating needs of the property, but in any event not later than the maturity of the principal. In addition, provision is made for a sinking fund for capital purposes as aforesaid out of money which would otherwise be available for dividends.

The funded debt of the Company and its operated subsidiaries now outstanding in the hands of the public (including certain bonds held alive in sinking funds), the present fixed interest charges thereon and such charges upon complete realization of the modifications proposed in the Plan are set out in Schedule 1. The annual average of the reported earnings of the Company and its presently operated subsidiaries, as combined, for the years 1924 to 1930, inclusive, 1931 to 1937, inclusive, and 1924 to 1937, inclusive, and the relation of such average earnings to the deductions and charges proposed under the Plan are shown in Schedule 2. The combined income accounts and combined profit-and-loss accounts of the Company and its subsidiaries now operated by it for each of the years 1924 to 1937, inclusive, and for the first eight months of 1938 are shown on Schedule 3. The consolidated balance sheet of the Company and such subsidiaries as of June 30, 1938, is shown on Schedule 4.

The Alton Railroad Company (hereinafter called the Alton), all the stock of which is owned by the Company, is separately operated. Neither its obligations nor its earnings are included in the Plan. The Company has, however, guaranteed a note of the Alton to R. F. C. which matured July 28, 1938, in the principal amount of $1,894,633, and has pledged certain securities owned by the Company as collateral for such note. The Alton is now negotiating with certain of its security holders a proposed plan for modification of its interest and rental charges. The Board of Directors of the Company believes that the continuance of the present relationships between the Company and the Alton is beneficial to both companies, and, in order to aid the Alton in working out a plan, the Company may agree to continue the present arrangements with the Alton for coordinated operation, including the existing arrangement whereby no per diem is debited or credited in respect of equipment interchanged between the Company and the Alton. The



ultimate provisions of any such plan in respect of such guaranty or the Alton stock owned by the Company are not now determinable.

For the success of the Plan a prompt and favorable response of the bondholders is essential. With the present low earnings the Company is not in a position to continue to make interest payment for any substantial period of time, and a default in interest prior to the consummation of the Plan might seriously endanger its successful accomplishment. Believing that the Plan is in the interest of its bondholders, the Company submits it with the earnest recommendation that it be accepted, and that in their own interest the security holders take prompt action to that end.

### II. SUMMARY OF OUTSTANDING CAPITALIZATION

The capitalization of the Company outstanding in the hands of the public, as of August 15, 1938 (including certain bonds held alive in sinking funds), comprises (see also Schedule 1):

| | | |
|---|---|---|
| Common Stock | $256, 295, 348 | |
| Preferred Stock | 58, 863, 137 | |
| Capital stock of subsidiary companies outstanding | 167, 050 | |
| Total Capital Stock | | $315, 325, 535 |
| Guaranteed stocks of subsidiary companies underlying Company mortgages having a par value of | $3, 707, 550 | |
| Baltimore and Ohio Equipment Obligations | 21, 960, 000 | |
| Other Funded Obligations Issued or Assumed by the Company | 612, 686, 378 | |
| Total Issued or Assumed Obligations | $638, 353, 928 | |
| Unassumed obligations of operated Subsidiary Companies | 46, 472, 150 | |
| Total Funded Obligations | | $684, 826, 078 |

### III. MODIFICATIONS PROPOSED BY THE PLAN

#### (a) *Securities of the company*

1. *The Baltimore and Ohio Railroad Company, Pittsburgh, Lake Erie and West Virginia 4% Bonds, due November 1, 1941,* of which $43,182,000, principal amount, are outstanding in the hands of the public, $21,177,000 are pledged and $51,400 are held in the Company's treasury, will be extended at the same rate of interest for a period of ten years so that they will mature November 1, 1951. Interest on these bonds will continue to be a fixed charge and they will continue to be redeemable as a whole (as at present) on any interest date at their principal amount and accrued interest.

2. *The Baltimore and Ohio Railroad Company Five Year 4½% Secured Notes, due August 1, 1939,* of which $50,000,000 are outstanding, will be extended for a period of five years, so that they will mature on August 1, 1944. They will bear interest at the present rate of 4½% to their present maturity on August 1, 1939, and thereafter at the rate of 4% per annum, in each case as a fixed charge. The Notes (now redeemable as a whole on February 1, 1939, at 100⅜% of their principal amount and accrued interst) will be made redeemable, in whole but not in part, at any time after August 1, 1939, on thirty days' notice, at their principal amount and accrued interest. The collateral securing the Notes will remain unchanged, except that the provisions of the Refunding and General Mortgage Bonds constituting part of such collateral will be modified as set out under 6, below.

3. *Notes to R. F. C.* (including certain notes to Public Works Administration acquired by R. F. C. but not including $1,424,000 of equipment trust obligations), bearing interest at 4% and maturing at various dates, aggregating $72,771,578, as of August 15, 1938, will be extended at the same rate of interest so as to mature five years after the effectuation of the Plan, but the Company will have the privilege of prepayment in whole or in part at any time. Interest on these Notes will continue to be a fixed charge. The collateral securing these Notes will remain unchanged, except that the provisions of certain system bonds constituting part of such collateral will be modified as set out in paragraphs 1 and 6 of this Section (a) and paragraphs 1 and 4 of Section (b) below.

4. *The Baltimore and Ohio Railroad Company First Mortgage 5% Bonds* (hereinafter called the First Mortgage 5% Bonds) bear interest at the rate of 5% per annum, 1% of which is not secured by any lien and is therefore an unsecured obligation of the Company. It is proposed that this 1% of interest in respect of the eight years from October 1, 1938, be made contingent and cumulative as provided in Article V hereof.

5. *The Baltimore and Ohio Railroad Company Southwestern Division Bonds* (hereinafter called the Southwestern Division Bonds) bear interest at the rate of 5% per annum, 1½% of which is not secured by any lien, and is therefore an unsecured obligation of the Company. It is proposed that this 1½% of interest, in respect of the eight years from January 1, 1939, be made contingent and cumulative as provided in Article V hereof.

6. *The Baltimore and Ohio Railroad Company Refunding and General Mortgage Bonds* (hereinafter called the Refunding Mortgage Bonds) are issued in six series, of which Series A, D and F bear interest at the rate of 5% per annum and Series B, C, and E bear interest at the rate of 6% per annum. All Series B Bonds and Series E Bonds are pledged or held in its treasury. It is proposed that one-fifth of the interest on these bonds (*i. e.*, 1% on the Series A, D, and F Bonds and 1⅕% on the Series B, C, and E Bonds) will remain a fixed charge. It is proposed that the remainder of the interest in respect of the eight years from August 1, 1938, in the case of the Series B Bonds, September 1, 1938, in the case of the Series D and F Bonds, October 1, 1938, in the case of the Series E Bonds, and December 1, 1938, in the case of the Series A and C Bonds, will be made contingent and cumulative as provided in Article V hereof.

Holders of Refunding Mortgage Bonds becoming bound by the Plan will thereby consent to the modification of the covenants of the Refunding and General Mortgage so as to remove a restriction presently contained in said mortgage, by providing that the Company may (without default under the Refunding and General Mortgage) at any time or from time to time extend (on such terms and for such periods as the Company may from time to time determine) (a) any bonds of any issue of which any or all are outstanding in the hands of the public, which are secured by a lien senior to that of the Refunding and General Mortgage and which mature before January 1, 1947 (including the Pittsburgh, Lake Erie and West Virginia Bonds), and (b) with the consent of holders of 66⅔% in principal amount of the Refunding Mortgage Bonds at the time outstanding, any such senior bonds of any later maturity or maturities.

In consideration of their acceptance of the Plan, holders of Refunding and General Mortgage bonds accepting or becoming bound by the Plan will be given the option to convert their bonds into Common Stock of the Company on the basis of $100 per share, with provisions for adjustment of said conversion price in case the Company should issue Common Stock at less than said conversion price, substantially similar to those now contained in the Indenture under which the Convertible 4½% Bonds (the only issue of convertible bonds now outstanding) were issued, such right of conversion to remain in effect until fifteen days prior to maturity or redemption.

The issue of additional bonds under the Refunding and General Mortgage will be limited by reducing the principal amount issuable after January 1, 1939, on the basis of additions, betterments and improvements, to 75% of the cost thereof and by permitting and requiring that in the case of bonds, if any, issued for the acquisition of equipment the maximum term shall be fifteen years and an annual sinking fund shall be established at a rate adequate to retire (at par) any bonds so issued by their maturity. Under the present provisions of the mortgage, no bonds may be issued having a maturity earlier than December 1, 1995; no such sinking fund is required; and additional bonds may be issued up to 90% of the cost of equipment and 100% of the cost of other additions, betterments and improvements until the amount of bonds outstanding, plus those reserved to retire prior debt, equals $600,000,000, and thereafter up to 80% of such costs.

Except as herein provided, the Refunding and General Mortgage will remain unchanged, and additional bonds bearing fixed interest may from time to time be issued thereunder as therein provided.

7. *The Baltimore and Ohio Railroad Company Convertible 4½% Bonds* are unsecured. It is proposed that all interest on these bonds in respect of the eight years from August 1, 1938, be made contingent and cumulative as provided in Article V hereof.

In consideration of the acceptance of the Plan by the holders of the Convertible Bonds, the present right to convert such bonds into Common Stock of the Company will be improved by: (a) reducing the conversion price from its present basis of $125 per share before February 1, 1941, and $130 per share before February 1, 1946, to $100 per share, with the present provisions for adjustment of said conversion price in case the Company should issue Common Stock at less than said conversion price; and (b) extending such privilege throughout the term of the bonds, until fifteen days prior to maturity or redemption.



All the interest adjustments above outlined, while in effect, will reduce the annual fixed interest charges on funded debt of the Company (excluding interest on obligations of operated subsidiaries) from $29,288,683 to $18,172,458. There will be $10,866,225 a year of contingent interest charges. (See Schedule 1.)

*(b) Securities of operated subsidiaries*

Modifications are proposed in certain bonds of three operated subsidiaries of the Company, viz., Buffalo, Rochester & Pittsburgh Railway Company (herein called the B. R. & P.), Buffalo & Susquehanna Railroad Corporation (herein called the B. & S.), and Cincinnati, Indianapolis & Western Railroad Company (herein called the C. I. & W.). The properties of these companies are at present operated by the Company under operating agreements which are terminable on sixty days' notice. Those agreements require the Company to pay interest maturing, and to lend moneys needed to meet principal maturing, while those agreements are respectively in force, but the bonds of such companies are not assumed by the Company. The Plan may be carried out as to the Company whether or not it is carried out as to any or all of these operated subsidiaries, and may be carried out as to any one or more of these operated subsidiaries even if not carried out as to all. Upon the effectuation of the Plan as to any such operated subsidiary, the present operating agreement between such company and the Company will be modified as set out in Article IX hereinbelow.

1. *B. R. & P. Consolidated Mortgage Bonds* (hereinafter called the B. R. & P. Consols) bear interest at the rate of 4½% per annum. It is proposed that two-thirds of such interest will remain a fixed charge and that the remainder of the interest in respect of the eight years from November 1, 1938, will be made contingent and cumulative as provided in Article V hereof.

Holders of the B. R. & P. Consuls becoming bound by the Plan will thereby consent to the modification of the covenants of the consolidated mortgage so as to remove a restriction presently contained in said mortgage, by permitting the extension (on such terms as the Company may from time to time determine) of any bonds of any issue of which any or all are outstanding in the hands of the public and which are secured by a lien senior to that of the Consolidated Mortgage (including the L. P. & C. Bonds) at any time, and whether or not such bonds shall previously have been extended, and waive any default under the Consolidated Mortgage because of any such extension.

It is believed that the small amounts which might be saved by any modification of the interest obligations on the miscellaneous small issues underlying the B. R. & P. Consols would be insufficient to justify the additional expense and difficulty resulting from their inclusion in the Plan, and accordingly no modification is proposed in respect of those issues except for the extension of the L. P. & C. Bonds as set out in 2, below.

2. *Lincoln Park and Charlotte Railroad Company First Mortgage 5% Bonds, due January 1, 1939* (herein called L. P. & C. Bonds, an obligation of the B. R. & P.), of which $350,000 are outstanding, and which are not now redeemable, will be extended for a period of ten years at the same rate of interest, so that they will mature on January 1, 1949, and will be made redeemable in whole but not in part at any time after January 1, 1939 on thirty days' notice at their principal amount and accured interest. Interest on these bonds will continue to be a fixed charge of the B. R. & P.

3. *B. & S. First Mortgage Bonds* are entitled to the benefit of sinking fund which includes interest on bonds acquired and held in the sinking fund ($3,765,700 so held as of August 15, 1938). It is proposed that no change be made in the interest payable on the outstanding bonds or in the principal instalments of the sinking fund aggregating $50,000 a year as provided in the Mortgage securing such bonds, but bondholders becoming bound by the Plan will agree that no interest be paid on bonds held in the sinking fund in respect of the eight years from December 31, 1938. The obligation to pay interest on bonds held in the sinking fund will, however, be extended for eight years after its present termination on January 1, 1949.

4. *C. I. & W. First Mortgage Bonds* (hereinafter called C. I. & W. Bonds) bear interest at the rate of 5%. It is proposed that three-fifths of the interest on the bonds will remain a fixed charge and that the remainder of the interest in respect of the eight years from November 1, 1938, will be made contingent and cumulative as provided in Article V hereof.

All the above modifications as to securities of operated subsidiaries, while in effect, will reduce the aggregate fixed interest charges on funded debt of these subsidiaries (including interest on B. & S. First Mortgage Bonds in sinking fund) from $2,133,059 to $1,472,221 and there will be $510,210 a year of contingent interest charges. (See Schedule 1.) In the case of any such subsidiary as to which the Plan is consummated the Company will relinquish its privilege presently provided by the operating agreements above mentioned to terminate its liability in respect of such charges.

All the interest adjustments above outlined, as to the Company and its operated subsidiaries, while in effect, will reduce total annual fixed interest charges on funded debt from $31,421,742 to $19,644,679. There will be $11,376,435 a year of contingent interest charges. (See Schedule 1.)

### IV. DETERMINATION AND APPLICATION OF AVAILABLE NET INCOME

Available Net Income shall be determined for each calendar year beginning with the year 1939, and continuing thereafter, whether for eight years or more, so long as any obligations for contingent interest remain outstanding. When no obligations for contingent interest remain outstanding, the provisions of this Article IV shall cease to be operative.

Available Net Income for each such calendar year shall be determined by deducting from the income of the Company available for fixed charges for such calendar year (determined in accordance with the accounting rules of the Interstates Commerce Commission or other analogous Federal authority having jurisdiction in the premises at the time in force, or, to the extent not governed by such accounting rules, in accordance with sound accounting practice):

(a) All fixed charges of the Company and its operated subsidiaries accrued during such calendar year; and

(b) All other charges properly deductible from such income in determining income after fixed charges under such accounting rules or practice, but excluding interest which in such calendar year is contingent and Capital Fund and Sinking Fund requirements hereinafter provided for; and

(c) All interest theretofore contingent which becomes absolutely payable in such calendar year without regard to earnings, whether accrued in respect of such calendar year or prior calendar years.

Available Net Income shall be ascertained for each such calendar year, as the accounts shall be stated on the books of the Company during such calendar year, without adjustments, except that: (1) if in respect of any calendar year the income of the Company available for fixed charges shall be inadequate to pay the amounts specified in (a), (b) and (c) above, the amount of such deficit may, in the discretion of the Board of Directors of the Company, be carried forward and be deducted in determining Available Net Income for the succeeding calendar year or calendar years until such deficit (or accumulated or remaining deficits) be extinguished by earnings which, in the absence of such deficit or deficits, would be Available Net Income; and (2) debits or credits to adjust income in prior years shall be treated as income items for the year in which entered on the books whether cleared through income or profit and loss accounts, so far, but only in so far, as such debits and credits reflect cash receipts or disbursements in the year in which they are entered on the books.

Available Net Income for each calendar year shall be applied to the following purposes and in the following order:

(1) If the Board of Directors of the Company in its discretion shall so determine, Available Net Income of each calendar year may be applied to the creation of a Capital Fund to be applied to, or to provide for or to reimburse the treasury of the Company for, Capital Investments, as defined by the Interstate Commerce Commission Classification of Income, Profit and Loss and General Balance Sheet Accounts for Steam Roads, Accounts Nos. 701 Investment in road and equipment, 702 Improvements on leaxed railway property and 705 Miscellaneous physical property (or advances to subsidiaries whose earnings or losses are included in the Company's income account for expenditures which, if made directly by the Company in respect of its owned properties, would be charged to said accounts), or such substituted accounts as may at the time be in effect, and including therein (but only to the extent that such payments during euch calendar year shall exceed depreciation of equipment charged against income for such calendar year) initial and principal payments upon equipment leased under equipment trusts or purchased under conditional sale agreements, to the extent that such Capital Investments have been made or contracted for during such calendar year or within three months thereafter, provided, however, that



(a) the amount set aside in the Capital Fund out of Available Net Income of any calendar year shall not exceed 2½% of the total railway operating revenues of the Company for such calendar year, less depreciation of roadway and structures charged against income in such calendar year, plus the amount, if any, by which Available Net Income for the last preceding calendar year shall have been less than the maximum amount permitted for the Capital Fund for such year by the preceding provisions of this subdivision (a);

(b) the Capital Fund may be applied only to such part of the cost of Capital Investments as hereinabove defined as remains after deducting from such cost all retirements of roadway and structures charged against income in such calendar year;

(c) to the extent that expenditures are so provided for or reimbursed out of the Capital Fund, the Company shall not thereafter have the right to issue any bonds or other evidences of indebtedness to capitalize or reimburse such expenditures; provided, however, that such expenditures may be used to supply, in whole or in part, any excess of capital expenditures required to be certified to the trustee under any indenture over the principal amount of the bonds or other obligations that may be issued under the terms of such indenture; and

(d) any amount which is available for the Capital Fund under the foregoing provisions but which is not expended, or appropriated to meet liabilities incurred, before the end of the year in respect of which it shall have been set aside or within three months thereafter shall not be carried forward.

(2) Any then remaining Available Net Income for the calendar year 1939 (but not for any subsequent year) up to $10,000,000 may, in the discretion of the Board of Directors, be applied to increase the Company's net working capital.

(3) Any then remaining Available Net Income for any calendar year shall be applied *pro rata* to the payment of (a) contingent interest on Refunding Bonds, (b) contingent interest on B. R. & P. Consols and (c) contingent interest on C. I. & W. Bonds, in each case up to the total contingent interest accrued thereon to the end of such calendar year and remaining unpaid.

(4) Any then remaining Available Net Income for any calendar year shall be applied *pro rata* to the payment of (a) contingent interest on First Mortgage 5% Bonds, (b) contingent interest on Southwestern Division Bonds and (c) contingent interest on Convertible Bonds, in each case up to the total contingent interest accrued thereon to the end of such calendar year and remaining unpaid.

(5) 75% of any then remaining Available Net Income for the calendar years 1939–1943, inclusive, and 50% of any then remaining Available Net Income for each calendar year thereafter shall be paid into the Sinking Fund, to be applied as provided in Article VI hereof.

(6) Any then remaining Available Net Income for any calendar year may, subject to the provisions hereof, be applied to any proper corporate purpose of the Company.

No contingent interest need be paid on any issue of bonds if the amount to be paid is less than ¼ of 1%. Any amount available for contingent interest on any issue, but not paid because of the foregoing provision, shall be reserved and added to the amount available for contingent interest on such issue for the next succeeding calendar year.

All payments of contingent interest on Refunding Bonds, B. R. & P. Consols and C. I. & W. Bonds shall be made, as among the several issues, in proportion to the unpaid interest accrued on the bonds of said respective issues to the end of the last preceding calendar year and as among the several series of Refunding Bonds in proportion to the unpaid interest accrued on the bonds of such respective series to the end of the last preceding calendar year. All payments of contingent interest on First Mortgage Bonds, Southwestern Division Bonds and Convertible Bonds shall be made, as among the several issues, in proportion to the unpaid interest accrued on the bonds of said issues, respectively, to the end of the last preceding calendar year.

Any contingent interest may at any time be paid, in the discretion of the Board of Directors, even if not then mandatorily payable by the terms hereof; provided, however, that (unless then mandatorily payable by the terms hereof) no contingent interest shall be paid on First Mortgage Bonds, Southwestern Division Bonds or Convertible Bonds unless all contingent interest accrued on outstanding Refunding Bonds, B. R. & P. Consols and C. I. & W. Bonds to the end of the last preceding calendar year shall have been paid, or set aside in trust for payment.

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Dividends may not be paid on stock of any class except out of earnings subsequent to December 31, 1938, nor unless, prior to the declaration of such dividends, (a) all contingent interest for prior calendar years shall have been paid or deposited in trust and (b) the Board of Directors shall have determined that the Available Net Income for the current calendar year applicable for the purposes specified in the foregoing paragraphs (3), (4) and (5), will be sufficient to pay the amounts payable out of such Available Net Income pursuant to said paragraphs and such amounts shall have been deposited in trust for the purposes specified in said paragraphs.

Available Net Income for any period between August 1, 1938, and January 1, 1939 shall be determined and applied as aforesaid, except that no deductions shall be made for Capital Fund or Sinking Fund.

In the event that the properties of the Company shall be unified with those of any other corporation having at the time bonds outstanding on which interest payments are in whole or in part contingent on earnings, then with the consent of the holders of a majority in principal amount of all the bonds on which any interest is then contingent by vitrue of this Plan the earnings from such other properties may be excluded in whole or in part in determining Available Net Income and provision may be made for determining Available Net Income without the maintenance of separate accounts.

### V. INTEREST PAYMENT DATES AND ACCUMULATION OF CONTINGENT INTEREST

Fixed interest on all bonds will be payable on the same dates as at present.

Contingent interest on all bonds will be payable on May 1 in each year, beginning May 1, 1939. The contingent interest payable (if earned) on May 1, 1939, will be all the interest (except that remaining fixed) accrued for each respective issue from its respective last interest payment date in 1938 to January 1, 1939, and in determining whether such interest has been earned Available Net Income will be determined for the same respective periods. Contingent interest payable (if earned) on May 1, 1940 and on each May 1 thereafter to and including May 1, 1946, will be in each case the interest accrued for the preceding calendar year, plus all accrued unpaid interest for prior periods. Contingent interest payable (if earned) thereafter will be the contingent interest accrued for each respective issue from January 1, 1946, to the date in that year on and after which interest on such issue is unaffected by the Plan, plus all accrued unpaid interest for prior periods.

All accrued and unpaid contingent interest on each issue of the Company's bonds shall accumulate as an absolute obligation, contingent as to the time of payment, and shall become payable (a) if, when and to the extent that Available Net Income in any calendar year is sufficient for the purpose after making the prior payments specified in Article IV hereof, in which case it shall be payable on May 1 of the next succeeding year; or (b) whenever the principal of the respective issue becomes payable, at maturity or by acceleration or otherwise.

Anything herein contained to the contrary notwithstanding, (a) if the Company shall not pay or extend or renew, within six months after their respective maturities as provided in the Plan or as further extended, the Notes to R. F. C. and at least 90% of the 4½% Secured Notes, or (b) if and when, after the consummation of the Plan, a petition, or answer admitting the allegations of a petition, shall be filed by the Company under any provision of the Bankruptcy Act or other similar law at the time in force or a permanent or confirmed appointment shall be made of any trustee or receiver for the Company or the greater part of its properties, then in either such event all interest made contingent under the provisions of the Plan shall forthwith become fixed interest and the coupons representing such contingent interest shall become absolutely due and payable on the respective dates therein stated.

The obligations of the B. R. & P. and the C. I. & W. in respect of contingent interest on the bonds of those companies shall be the same as those of the Company in respect of its bonds as provided hereinabove.

### VI. SINKING FUND

In consideration of the extension of maturities and change of interest from fixed to contingent as and to the extent hereinabove provided, the Company will create a Sinking Fund as provided below. Instalments of the Sinking Fund shall be payable, if and to the extent earned as herein provided, out of income for the calendar year 1939 and every calendar year thereafter until all obligations for contingent interest shall have been paid and $100,000,000 aggregate principal



amount of obligations shall have been retired by the operation of the Sinking Fund. Such payments shall in each case be made on May 1 of the year next following the year out of the income of which they are paid. In respect of the five years 1939–1943, inclusive, such payments into the Sinking Fund shall equal 75% of the Available Net income that remains after the deductions made pursuant to paragraphs (1), (2), (3), and (4), of Article IV hereof. After 1943 the Sinking Fund shall equal 50% of the Available Net Income that remains after the deductions made pursuant to paragraphs (1), (3), and (4) of said Article IV, or, after all obligations for contingent interest shall have been paid, 50% of net income as defined by the accounting rules or practice referred to in Article IV hereof. The Company may make additional payments into the Sinking Fund in its discretion. Not less than one-third of the Sinking Fund payments made in respect of the five years 1939–1943, inclusive, and not less than one-half of the Sinking Fund payments made thereafter, shall be applied to the payment, purchase, or redeption of obligations (other than equipment trust obligations) of the Company or an operated subsidiary, secured by lien on physical property or securities. The remainder of each Sinking Fund payment shall be applied within twelve months after such payment is made, in the discretion of the Board of Directors of the Company, (a) to the retirement of obligations as aforesaid, (b) to the creation and maintenance of net working capital in such amount as shall in the judgment of the Board of Directors be adequate and requisite for the purposes of the Company, or (c) to capital investments as defined by the accounting rules of the Interstate Commerce Commission. It will be provided (a) that the Company may purchase bonds or obligations of any issue or issues eligible for acquisition under the preceding provisions of this Article VI in the open market or by call for tenders or otherwise at not exceeding the redemption price (or in case of obligations not redeemable the principal amount and accrued interest) of the obligations purchased, or may pay matured obligations or redeem redeemable obligations of any such issue or issues; (b) that all bonds and obligations retired by the Sinking Fund will be cancelled; (c) that no bonds or other obligations may be issued to refund such bonds or obligations; and (d) that no bonds or other evidences of indebtedness may be issued to capitalize or reimburse capital expenditures made out of the Sinking Fund, but that such expenditures may be used to supply, in whole or in part, any excess of capital expenditures required to be certified to the trustee under any indenture over the principal amount of the bonds or other obligations that may be issued under the terms of such indenture.

### VII. METHOD OF ACCEPTANCE OF THE PLAN

Holders of the issues affected by the Plan who desire to accept the Plan should deposit their securities, in negotiable form, with one of the Agents to be appointed for the purpose by the Company (or, in case of securities of an operated subsidiary, by such operated subsidiary) together with written assents to the Plan in such forms as may be agreed upon between the security holder and the Company. Assents may, however, be accepted without the deposit of securities, with the privilege of withdrawal on the same events as in the case of deposit, or on such other terms and conditions, either as to withdrawal or otherwise, as the Company may determine. Title to deposited securities will not pass from the respective depositors except to transferees of their respective certificates of deposit.

On request at the time of deposit security holders will be reimbursed for all ordinary expenses of forwarding their securities for deposit, including cost of registration and insurance

All securities deposited must be accompanied by all coupons maturing after January 1, 1939. Any interest that may be paid in respect of deposited bonds prior to the consummation of the Plan will be paid to the registered owners of the certificates of deposit representing such deposited bonds.

Certificates of deposit in fully registered form will be issued in respect of all securities deposited. The proposed general forms of such certificates of deposit are set out in Schedule 5 hereto. Such certificates of deposit will be issued by the Company in respect of its securities and by each operated subsidiary in respect of its securities. Applications will be made to list and register on the New York Stock Exchange certificates of deposit issued in respect of deposited securities now listed on said Exchange.

Any assents to the Plan may be revoked and any securities deposited under the Plan may be withdrawn at any time after December 31, 1938, and before the Plan shall have been declared operative, provided that the reasonable charges and expenses of the Agent for its services in connection with such withdrawal shall be paid to the Agent at the time of withdrawal.

VIII. MANNER OF DECLARING PLAN OPERATIVE—MODIFICATIONS—ABANDONMENT

The Company may declare the Plan operative whenever, in the judgment of the Board of Directors of the Company, the holders of a sufficient amount of the obligations affected by the Plan (whether or not sufficient to carry out the Plan as provided in the third paragraph of Article IX hereof) shall have become subject to the Plan to make it advisable so to do. If the Plan shall have been declared operative as to the securities of the Company, it may be declared operative as to the securities of the B. R. & P., the B. & S. and the C. I. & W. or any one or more of them, whenever the Board of Directors of the Company deems it advisable.

The Plan shall become operative when declared operative by the Company and when notice thereof shall have been published in the manner provided in Article X hereof on or before January 1, 1939, or such later date as may be determined by the Company.

A declaration that the Plan is operative will not change the rights of security holders, whether or not they shall have assented to the Plan, except by terminating the right of withdrawal provided by the last paragraph of Article VII hereof.

The Company may from time to time modify or amend the Plan; provided, however, that notice of such modification or amendment shall be given to the holders of obligations of any class affected by such modification or amendment, in the manner provided in Article X hereof, and shall also be mailed to holders of such obligations who have assented to the Plan, and to holders of certificates of deposit for such obligations, addressed to them at such addresses as they may have given to the Company. Holders of obligations of any class so affected may revoke their assents and withdraw any deposited obligations of such class by notice in writing to the Company, accompanied by the surrender of their certificates of deposit, if any, in negotiable form, at any time within thirty days after the first publication of such notice. The holder of any certificate of deposit so withdrawing his assent shall be entitled, without expense to him, to the return of the obligations represented by such certificate of deposit. Holders of such obligations who do not so revoke their assents and withdraw any deposited obligations within said period of thirty days shall be deemed to have consented to such modification or amendment of the Plan, and such holders and their bonds, coupons, and other obligations theretofore subjected to the Plan shall be bound thereby with like effect as if such modification or amendment had been part of the Plan prior to their assents thereto.

The Plan may be abandoned by the Company at its option at any time prior to its consummation whether or not theretofore declared operative, by publishing notice of such abandonment in the manner provided in Article X hereof. Upon any such abandonment, all obligations theretofore deposited under the Plan will be returned to holders of certificates of deposit, without expense to such holders.

IX. METHOD OF CARRYING OUT THE PLAN

All expenses of carrying out the Plan will be borne by the Company.

The issuance of certificates of deposit and new or modified securities in accordance with the Plan has been authorized by the Interstate Commerce Commission under Section 20a of the Interstate Commerce Act by an order dated November 1, 1938, but the Commission has not yet passed upon the extension of the Notes held by R. F. C. or the modification of the operating agreements, both of which are subject to its jurisdiction under other provisions of law.

No securities of any class deposited under the Plan will be stamped or exchanged for new securities issuable under the Plan unless and until holders of at least 90% of the securities of each issue of the Company affected by the Plan outstanding in the hands of the public shall have accepted or become bound by the Plan.

If the Board of Directors of the Company shall so determine, the Plan may be carried out through proceedings under Section 77 of the Bankruptcy Act or other law at the time in force, or through such other legal proceedings as the Board of Directors may deem appropriate to effectuate the Plan as to non-assenting minorities. The assents to be executed by security holders will provide that they will be effective as assents to the Plan in any such legal proceedings as fully as if executed after the institution of such proceedings, subject, however, to withdrawal rights, as provided herein or by law, in the event of any modification of the Plan.

Upon the effectuation of the Plan as to any of the operated subsidiaries, the present operating agreement between such company and the Company will be modified so as to provide that (1) the sums to be paid thereunder by the Company will include sums equal to the obligation of such company, to the extent herein



provided, in respect of all interest on funded debt of such company to and including the respective principal maturities, without, however, retaining or creating any obligation on the part of the Company in respect of such principal maturities, and (2) the Company shall not have the right to terminate such agreement prior to the maturity of the B., R. & P. Consols, the B. & S. First Mortgage Bonds, or the C., I. & W. Bonds, as the case may be. If the Plan shall not be effectuated as to any of said companies, the Company may, if it then deems it desirable so to do, terminate the applicable operating agreement in accordance with the terms thereof, in which even the Company would be under no further obligation in respect of the securities of such company.

When the Plan is consummated a supplemental indenture will be executed in respect of each of the issues affected by the Plan (other than the Notes to R. F. C.) giving effect to the changes contemplated by the Plan, such supplemental indentures to be in such form, not inconsistent with the Plan, as the Company may determine. Such supplemental indentures will, among other things, provide that the extended Bonds or Notes will continue to be secured by the same lien as at present and that the obligations of the Company, as hereinabove provided, in respect of interest secured by a mortgage lien which becomes contingent under the Plan will not cease to be entitled to the benefit of such mortgage lien pro rata with the bonds and the other interest obligations secured by such lien.

When the Plan is consummated the Bonds and Notes of the several issues affected will be stamped in conformity with the Plan, and if in coupon form, additional or substituted coupons in accordance with the Plan will be attached.

X. NOTICES UNDER THE PLAN

Except as herein otherwise expressly provided, all notices required or permitted under the provisions of the Plan shall be sufficiently given if published once in each of two successive calendar weeks in a daily newspaper of general circulation published in the City of New York, N. Y., and in a daily newspaper of general circulation published in the City of Baltimore, Maryland.

Dated August 15, 1938.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

SCHEDULE 1.—*As of Aug. 15, 1938*

| Issues | Present interest rate, percent | Maturity | Principal amount outstanding | Present annual interest charges | Proposed revision of interest charges | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | Fixed | | Contingent | |
| | | | | | Percent | Amount | Percent | Amount |
| Funded debt of the Baltimore & Ohio Railroad Co.: | | | | | | | | |
| B. & O. R. R. Co.: | | | | | | | | |
| First mortgage bonds | 4 | July 1, 1948 | $81,994,850 | $3,279,794 | 4 | $3,279,794 | | |
| Do | 5 | do | 75,000,000 | 3,750,000 | 4 | 3,000,000 | [1] 1 | [2] $750,000 |
| Southwestern division bonds | 5 | July 1, 1950 | 45,000,000 | 2,250,000 | 3½ | 1,575,000 | [1] 1½ | [2] 675,000 |
| Pittsburgh, Lake Erie & West Virginia bonds | 4 | Nov. 1, 1941 | [3] 43,182,000 | 1,727,280 | 4 | 1,727,280 | | |
| C. T. & V. R. R. Co.: First Mortgage bonds | 4 | Nov. 1, 1995 | 3,301,000 | 132,040 | 4 | 132,040 | | |
| W. Va. & P. R. R. Co.: | | | | | | | | |
| First mortgage bonds | 4 | Apr. 1, 1990 | 3,525,000 | 141,000 | 4 | 141,000 | | |
| Do | 4 | do | [4] 456,000 | 18,240 | 4 | 18,240 | | |
| O. & L. K. R. R. Co.: First mortgage bonds | 5 | Mar. 1, 1950 | 228,000 | 11,400 | 5 | 11,400 | | |
| B. & O. R. R. Co.: Toledo-Cincinnati Division bonds | 4 | July 1, 1959 | 10,985,200 | 439,408 | 4 | 439,408 | | |
| C. H. & D. R. R. Co.: General mortgage bonds | 5 | June 1, 1942 | 3,000,000 | 150,000 | 5 | 150,000 | | |
| C. H. & D. Ry. Co.: First and refunding bonds | 4 | July 1, 1959 | 10,000 | 400 | 4 | 400 | | |
| P. & T. Br. R. R. Co.: First mortgage bonds | 4 | Nov. 1, 1939 | 7,000 | 280 | 4 | 280 | | |
| D. & M. R. R. Co.: | | | | | | | | |
| Guaranteed preferred stock | [5] 8 | | 1,211,250 | 96,900 | 8 | 96,900 | | |
| Guaranteed common stock | [5] 3½ | | 2,396,950 | 83,893 | 3½ | 83,893 | | |
| Home Co.: Guaranteed stock | [5] 5 | | 99,350 | 4,967 | 5 | 4,967 | | |
| B. & O. R. R. Co.: | | | | | | | | |
| Equipment obligations | 3½–5 | Serially | 21,960,000 | 860,325 | | 860,325 | | |
| 5-year secured notes | 4½ | Aug. 1, 1939 | [6] 50,000,000 | 2,250,000 | 4 | [7] 2,000,000 | | |
| Reconstruction Finance Corporation loans | 4 | 1939–42 | [8] 69,816,578 | 2,792,663 | 4 | 2,792,663 | | |
| Public Works Administration loan | 4 | Serially | [9] 2,955,000 | 118,200 | 4 | 118,200 | | |
| Public Works Administration equipment loan | 4 | do | 1,424,000 | 56,960 | 4 | 56,960 | | |
| Refunding and general series A bonds | 5 | Dec. 1, 1995 | 60,000,000 | 3,000,000 | 1 | 600,000 | 4 | [9] 2,400,000 |
| Refunding and general series C bonds | 6 | do | 35,000,000 | 2,100,000 | 1⅛ | 420,000 | 4⅛ | [9] 1,680,000 |
| Refunding and general series D bonds | 5 | Mar. 1, 2000 | 30,000,000 | 1,500,000 | 1 | 300,000 | 4 | [9] 1,200,000 |
| Refunding and general series F bonds | 5 | Mar. 1, 1996 | 33,120,750 | 1,656,038 | 1 | 331,208 | 4 | [9] 1,324,830 |
| 30-year convertible bonds | 4½ | Feb. 1, 1960 | 63,031,000 | 2,836,395 | | | [1] 4½ | [2] 2,836,395 |
| B. & O. C. T. R. R. Co.: Real estate mortgage | 5 | May 1, 1938 | 650,000 | 32,500 | 5 | 32,500 | | |
| Total funded debt of the Baltimore & Ohio Railroad Co | | | 638,353,928 | 29,288,683 | | 18,172,458 | | 10,866,225 |



| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Funded debt of operated subsidiaries not assumed by the Baltimore & Ohio Railroad Co.: | | | | | | | | |
| B. R. & P. Ry. Co.: Consolidated mortgage bonds | 4½ | May 1, 1957 | 29,114,000 | 1,310,130 | 3 | 873,420 | 1½ | [9] 436,710 |
| L. P. & C. R. R. Co.: First mortgage bonds | 5 | Jan. 1, 1939 | [10] 350,000 | 17,500 | 5 | 17,500 | | |
| A. & W. Ry. Co.: | | | | | | | | |
| First mortgage bonds | [11] 4 | Oct. 1, 1998 | 2,000,000 | 80,000 | 4 | 80,000 | | |
| Guaranteed stock | [11] 6 | | 3,193,300 | 191,598 | 6 | 191,598 | | |
| C. & M. Ry. Co.: | | | | | | | | |
| First mortgage bonds | [11] 5 | Jan. 1, 1943 | 650,000 | 32,500 | 5 | 32,500 | | |
| Guaranteed stock | [11] 6 | | 899,350 | 53,961 | 6 | 53,961 | | |
| Total B. R. & P. Ry. Co | | | 36,206,650 | 1,685,689 | | 1,248,979 | | 436,710 |
| B. & S. R. R. Corp.: | | | | | | | | |
| First mortgage bonds | 4 | Dec. 30, 1963 | 2,824,800 | 112,992 | 4 | 112,992 | | |
| Do | 4 | do | [4] 3,765,700 | 150,628 | | | | |
| C. I. & W. R. R. Co.: First mortgage bonds | 5 | Nov. 1, 1965 | 3,675,000 | 183,750 | 3 | [12] 110,250 | 2 | [9] 73,500 |
| Total unassumed funded debt of operated subsidiaries | | | 46,472,150 | 2,133,059 | | 1,472,221 | | 510,210 |
| Grand total | | | 684,826,078 | 31,421,742 | | 19,644,679 | | 11,376,435 |

[1] Interest unsecured by mortgage lien.
[2] Unsecured contingent interest.
[3] Maturity to be extended to Nov. 1, 1951.
[4] Held in sinking funds alive and bearing interest.
[5] Maturity to be extended to Aug. 1, 1944.
[6] Interest to be reduced to 4% after present maturity on Aug. 1, 1939.
[7] Maturity to be extended to 5 years after effectuation of the Plan.
[8] Secured contingent interest.
[9] Maturity to be extended to Jan. 1, 1949.
[10] Leased Lines of B. R. & P. Ry. Co.
[11] Interest on B. & S. R. R. Corp. Bonds in sinking fund to be eliminated for 8 years and extended for an equal period.

Full accomplishment of the proposed revisions will result in interest charges as follows:

| | | |
|---|---|---|
| Fixed interest | | $19,644,679 |
| Secured contingent interest | $7,115,040 | |
| Unsecured contingent interest | 4,261,395 | 11,376,435 |
| Total interest charges | | 31,021,114 |

The above does not include bank loans of $1,450,000 or current operating obligations. Interest on unassumed funded debt of operated subsidiaries is paid by B. & O. R. R. Co. pursuant to the respective operating agreements. They are now terminable on 60 days' notice but may be modified and extended as provided in the Plan.
The Alton Railroad Co., all the stock of which is owned by B. & O. R. R. Co., is separately operated. Neither its obligations nor its earnings are included in the Plan

SCHEDULE 2.—*The Baltimore & Ohio R. R. Co. and subsidiaries now operated by it*

| | Average year, period 1924 to 1930, inclusive | Average year, period 1931 to 1937, inclusive | Average year, period 1924 to 1937, inclusive |
|---|---|---|---|
| Average annual income available for fixed charges | $54, 891, 668 | $31, 838, 943 | $43, 365, 305 |
| Charges remaining fixed under plan | 19, 644, 679 | 19, 644, 679 | 19, 644, 679 |
| Other fixed charges [1] | 914, 227 | 937, 449 | 925, 838 |
| | 20, 558, 906 | 20, 582, 128 | 20, 570, 517 |
| Remainder available for other charges | 34, 332, 762 | 11, 256, 815 | 22, 794, 788 |
| Maximum appropriation for capital fund, being 2½ percent of total railway operating revenues | 6, 405, 270 | 3, 736, 681 | 5, 070, 976 |
| Remainder available for secured contingent charges [2] | 27, 927, 492 | 7, 520, 134 | 17, 723 812 |
| Secured contingent interest charges | 7, 115, 040 | 7, 115, 040 | 7, 115, 040 |
| Remainder available for unsecured interest charges | 20, 812, 452 | 405, 094 | 10, 608, 772 |
| Unsecured contingent interest charges | 4, 261, 395 | 4, 261, 395 | 4, 261, 395 |
| Remaining available net income or deficit | 16, 551, 057 | [4] 3, 856, 301 | 6, 347, 377 |
| Appropriation for sinking fund—75 percent of available net income [3] | 12, 413, 293 | | 4, 760, 533 |
| Net surplus of deficit | [5] 4, 137, 764 | [4] 3, 856, 301 | [5] 1, 586, 844 |

[1] Additional items classified by Interstate Commerce Commission as fixed charges, such as "Rent for leased roads and equipment," "Interest on unfunded debt," "Ground rents," etc., to the extent they are not reflected in the securities and charges set out in schedule 1.
[2] Subject for the year 1939 only, to deduction of not exceeding $10,000,000 to increase net working capital (see par. (2) of art. IV.)
[3] The sinking fund appropriation will be 50 percent of available net income after 1943.
[4] Deficit.
[5] Surplus or deficit.



SCHEDULE 3. *Income and profit and loss account*

A. INCOME ACCOUNT—THE BALTIMORE & OHIO R. R. CO.

[Buffalo, Rochester & Pittsburgh Ry., Buffalo & Susquehanna R. R., and Cincinnati, Indianapolis & Western R. R. included in all periods]

| | 1924 | 1925 | 1926 | 1927 | 1928 | 1929 | 1930 |
|---|---|---|---|---|---|---|---|
| Railway operating revenues: | | | | | | | |
| Freight | $199, 410, 097 | $213, 331, 346 | $230, 009, 888 | $220, 817, 886 | $214, 196, 138 | $223, 396, 039 | $189, 526, 546 |
| Passenger | 31, 118, 891 | 29, 744, 949 | 29, 414, 604 | 27, 392, 096 | 24, 646, 299 | 23, 000, 371 | 3, 226, 286 |
| Mail | 2, 951, 229 | 2, 960, 303 | 2, 924, 385 | 2, 944, 243 | 3, 252, 073 | 4, 976, 529 | 3, 363, 081 |
| Express | 5, 089, 213 | 5, 585, 591 | 5, 458, 695 | 5, 213, 370 | 4, 978, 189 | 5, 197, 325 | 3, 931, 696 |
| All other | 8, 136, 149 | 8, 736, 282 | 9, 225, 798 | 8, 763, 179 | 8, 345, 469 | 8, 427, 879 | 7, 603, 621 |
| Total | 246, 705, 579 | 260, 358, 471 | 277, 033, 370 | 265, 130, 774 | 255, 418, 168 | 264, 998, 143 | 223, 851, 230 |
| Railway operating expenses: | | | | | | | |
| Maintenance of way and structures | 29, 356, 166 | 31, 521, 135 | 35, 171, 368 | 33, 502, 839 | 29, 360, 047 | 32, 074, 150 | 24, 719, 491 |
| Maintenance of equipment | 55, 099, 958 | 59, 261, 879 | 60, 771, 391 | 57, 567, 272 | 52, 328, 228 | 57, 294, 931 | 46, 204, 409 |
| Total maintenance | 84, 456, 124 | 90, 783, 014 | 95, 942, 759 | 91, 070, 111 | 81, 688, 275 | 89, 369, 081 | 70, 923, 900 |
| Traffic | 4, 742, 532 | 5, 089, 910 | 5, 605, 943 | 5, 977, 419 | 6, 131, 337 | 6, 383, 214 | 6, 741, 635 |
| Transportation | 93, 986, 607 | 93, 258, 822 | 96, 356, 256 | 94, 459, 140 | 89, 364, 759 | 89, 895, 604 | 79, 014, 479 |
| Miscellaneous operations | 1, 828, 281 | 2, 195, 386 | 2, 356, 686 | 2, 345, 807 | 2, 225, 144 | 2, 322, 910 | 2, 171, 672 |
| General | 6, 986, 399 | 7, 028, 253 | 7, 419, 737 | 9, 477, 996 | 8, 555, 083 | 8, 871, 359 | 8, 770, 525 |
| Transportation for investment—Credit | [1] 74, 642 | [1] 101, 799 | [1] 133, 109 | [1] 123, 337 | [1] 99, 296 | [1] 79, 900 | [1] 73, 123 |
| Total | 191, 925, 301 | 198, 253, 586 | 207, 548, 272 | 203, 207, 136 | 187, 865, 302 | 196, 762, 268 | 167, 549, 088 |
| Net revenue from railway operations | 54, 780, 278 | 62, 104, 885 | 69, 485, 098 | 61, 923, 638 | 67, 552, 866 | 68, 235, 875 | 56, 302, 142 |
| Other operating charges: | | | | | | | |
| Railway tax accruals | 10, 227, 047 | 10, 816, 294 | 12, 688, 992 | 12, 634, 873 | 12, 163, 291 | 12, 571, 911 | 10, 704, 033 |
| Equipment and joint facility rents, etc | 3, 252, 552 | 5, 191, 309 | 3, 373, 348 | 2, 389, 468 | 2, 892, 772 | 3, 232, 762 | 2, 648, 907 |
| Total | 13, 479, 599 | 16, 007, 603 | 16, 062, 340 | 15, 024, 341 | 15, 056, 063 | 15, 804, 673 | 13, 352, 940 |
| Net railway operating income | 41, 300, 679 | 46, 097, 282 | 53, 422, 758 | 46, 899, 297 | 52, 496, 803 | 52, 431, 202 | 42, 949, 202 |

[1] Credit.

SCHEDULE 3. *Income and profit and loss account*—Continued

A. INCOME ACCOUNT—THE BALTIMORE & OHIO RAILROAD CO.—Continued

| | 1924 | 1925 | 1926 | 1927 | 1938 | 1929 | 1930 |
|---|---|---|---|---|---|---|---|
| Other income: | | | | | | | |
| Rental income | $1,402,173 | $1,424,527 | $1,250,252 | $1,086,408 | $993,993 | $1,056,207 | $1,066,285 |
| Dividend income | 2,029,627 | 2,003,408 | 2,621,351 | 2,888,715 | 2,905,428 | 2,629,698 | 5,489,569 |
| Interest income | 2,611,641 | 2,947,711 | 3,107,835 | 3,990,800 | 3,085,962 | 4,312,747 | 4,178,239 |
| All other | 25,790 | 485,805 | 299,438 | 1,004,938 | 808,435 | 804,737 | 927,510 |
| Total | 6,069,231 | 6,861,451 | 7,278,876 | 8,970,861 | 7,793,818 | 8,803,389 | 11,661,603 |
| Total income | 47,369,910 | 52,958,733 | 60,701,634 | 55,870,158 | 60,290,621 | 61,234,591 | 54,610,805 |
| Miscellaneous deductions from income | 1,733,894 | 1,536,933 | 1,070,909 | 981,966 | 1,009,562 | 1,188,010 | 1,273,504 |
| Income available for fixed charges | 45,636,016 | 51,421,800 | 59,630,725 | 54,888,192 | 59,281,059 | 60,046,581 | 53,337,301 |
| Fixed charges: | | | | | | | |
| Rent for leased roads and equipment | 979,265 | 980,331 | 968,606 | 969,334 | 969,264 | 970,250 | 970,870 |
| Interest on funded debt (fixed interest) | 27,067,734 | 28,586,238 | 29,496,331 | 29,849,449 | 27,626,084 | 27,427,287 | 29,787,190 |
| Interest on unfunded debt | 229,228 | 188,143 | 406,127 | 1,284,923 | 422,600 | 1,580,180 | 334,763 |
| Amortization of discount on funded debt | 7,091 | 7,096 | 7,097 | 5,381 | 2,804 | 5,421 | 5,474 |
| Total | 28,283,318 | 29,761,808 | 30,878,161 | 32,109,087 | 29,020,752 | 29,983,138 | 31,098,297 |
| Net income | 17,352,698 | 21,659,992 | 28,752,564 | 22,779,105 | 30,260,307 | 30,063,443 | 22,239,004 |

| | 1931 | 1932 | 1933 | 1934 | 1935 | 1936 | 1937 | 8 months Jan. 1 to Aug. 31, 1938 |
|---|---|---|---|---|---|---|---|---|
| Railway operating revenues: | | | | | | | | |
| Freight | $145,197,431 | $106,060,060 | $113,380,296 | $116,298,463 | $122,787,627 | $147,816,918 | $147,212,330 | $71,754,207 |
| Passenger | 15,194,788 | 10,362,683 | 9,798,466 | 10,147,702 | 9,887,724 | 11,182,941 | 11,918,602 | 7,072,434 |
| Mail | 3,338,382 | 3,227,953 | 3,038,397 | 3,012,617 | 3,008,277 | 3,078,136 | 3,225,199 | 2,052,165 |
| Express | 2,828,916 | 1,800,567 | 1,462,159 | 1,681,331 | 1,723,569 | 1,915,418 | 1,750,329 | 734,945 |
| All other | 6,193,912 | 4,431,560 | 4,112,935 | 4,399,282 | 4,466,446 | 4,499,267 | 5,329,976 | 2,835,759 |
| Total | 172,753,429 | 125,882,823 | 131,792,253 | 135,539,395 | 141,873,643 | 168,992,680 | 169,436,436 | 84,449,510 |
| Railway operating expenses: | | | | | | | | |
| Maintenance of way and structures | 15,266,061 | 10,317,522 | 10,939,855 | 11,784,790 | 12,083,155 | 15,423,320 | 16,947,206 | 7,760,499 |
| Maintenance of equipment | 35,522,657 | 22,157,472 | 24,011,165 | 28,038,000 | 30,498,119 | 38,029,073 | 38,069,094 | 18,646,652 |
| Total maintenance | 50,788,718 | 32,474,994 | 34,951,020 | 39,822,790 | 42,581,274 | 53,452,393 | 55,016,300 | 26,407,151 |
| Traffic | 6,256,097 | 4,734,047 | 4,026,271 | 4,219,618 | 4,447,726 | 4,702,813 | 4,950,084 | 2,980,568 |
| Transportation | 64,927,747 | 46,343,122 | 43,771,782 | 47,445,840 | 50,300,666 | 57,227,837 | 61,195,718 | 34,665,155 |
| Miscellaneous operations | 1,798,814 | 1,301,420 | 1,152,283 | 1,215,377 | 1,325,028 | 1,515,647 | 1,769,678 | 980,742 |
| General | 8,358,233 | 7,153,929 | 6,545,184 | 6,682,798 | 6,820,938 | 6,717,039 | 5,936,657 | 3,321,087 |
| Transportation for investment—Credit | [1] 25,084 | [1] 352,577 | [1] 76,840 | [1] 48,639 | [1] 11,492 | [1] 15,396 | [1] 8,921 | [1] 10,072 |
| Total | 132,104,525 | 91,654,935 | 90,369,700 | 99,337,784 | 105,464,140 | 123,600,333 | 128,859,516 | 68,344,631 |
| Net revenue from railway operations | 40,648,904 | 34,227,888 | 41,422,553 | 36,201,611 | 36,409,503 | 45,392,347 | 40,576,920 | 16,104,879 |
| Other operating charges: | | | | | | | | |
| Railway tax accruals | 9,255,700 | 8,905,018 | 8,156,726 | 7,908,010 | 7,232,736 | 10,222,322 | 10,918,555 | 7,089,474 |
| Equipment and joint facility rents, etc | 3,640,806 | 3,349,472 | 4,416,626 | 4,615,662 | 4,877,810 | 4,984,720 | 4,749,740 | 3,014,631 |
| Total | 12,896,506 | 12,254,490 | 12,573,352 | 12,523,672 | 12,110,546 | 15,207,042 | 15,668,295 | 10,103,835 |
| Net railway operating income | 27,752,398 | 21,973,398 | 28,849,201 | 23,677,939 | 24,298,957 | 30,185,305 | 24,908,625 | 6,001,044 |
| Other income: | | | | | | | | |
| Rental income | 1,067,292 | 977,806 | 863,798 | 836,666 | 977,502 | 1,313,160 | 1,326,336 | 1,000,216 |
| Dividend income | 5,340,841 | 2,465,043 | 2,423,123 | 2,742,641 | 3,066,137 | 5,109,440 | 4,906,869 | 1,868,223 |
| Interest income | 2,884,075 | 2,959,424 | 2,716,647 | 2,692,926 | 2,848,219 | 2,530,855 | 2,182,861 | 1,416,319 |
| All other | 197,491 | 176,556 | 214,453 | 222,899 | 88,583 | 168,310 | 101,778 | 38,384 |
| Total | 9,489,699 | 6,578,829 | 6,218,021 | 6,495,132 | 6,980,441 | 9,121,765 | 8,517,844 | 4,323,142 |
| Total income | 37,242,097 | 28,552,227 | 35,067,222 | 30,173,071 | 31,279,398 | 39,307,070 | 33,426,469 | 10,324,186 |
| Miscellaneous deductions from income | 1,658,320 | 1,764,393 | 1,417,476 | 1,657,519 | 1,839,039 | 1,875,071 | 1,963,133 | 1,718,185 |
| Income available for fixed charges | 35,583,777 | 26,787,834 | 33,649,746 | 28,515,552 | 29,440,359 | 37,431,999 | 31,463,336 | 8,606,001 |
| Fixed charges: | | | | | | | | |
| Rent for leased roads and equipment | 846,626 | 846,511 | 849,042 | 844,406 | 841,407 | 1,115,259 | 1,166,228 | 709,464 |
| Interest on funded debt (fixed interest) | 29,917,888 | 30,667,374 | 31,381,633 | 30,723,749 | 30,759,334 | 30,607,877 | 30,641,090 | 20,541,982 |
| Interest on unfunded debt | 1,391,463 | 1,608,927 | 1,214,299 | 773,149 | 1,020,527 | 1,169,888 | 376,713 | 219,517 |
| Amortization of discount on funded debt | 138 | | | | | | | |
| Total | 32,156,115 | 33,122,812 | 33,444,974 | 32,341,304 | 32,621,268 | 32,893,024 | 32,184,031 | 21,470,963 |
| Net income | 3,427,662 | [2] 6,334,978 | 204,772 | [2] 3,825,752 | [2] 3,180,909 | 4,538,975 | [2] 720,695 | [2] 12,864,962 |

[1] Credit.
[2] Deficit.

SCHEDULE 3.—*Income and profit and loss account*—Continued

B. PROFIT AND LOSS ACCOUNT—THE BALTIMORE & OHIO RAILROAD CO.

[Buffalo, Rochester & Pittsburgh Ry., Buffalo & Susquehanna R. R. and Cincinnati, Indianapolis & Western R. R. included in all periods]

| | 1924 | 1925 | 1926 | 1927 | 1928 | 1929 | 1930 |
|---|---|---|---|---|---|---|---|
| Net income or deficit | [1] $17,352,698 | [1] $21,659,992 | [1] $28,752,564 | [1] $22,779,105 | [1] $30,260,307 | [1] $30,063,443 | [1] $22,239.004 |
| Disposition of net income: | | | | | | | |
| Income applied to sinking and other reserve funds | 279,205 | 330,395 | 502,342 | 495,091 | 415,727 | 349,960 | 220,125 |
| Dividend appropriations of income [12] | 6,153,230 | 6,153,163 | 6,153,163 | 6,912,890 | 2,354,529 | 2,354,527 | 2,354,528 |
| Total | 6,432,435 | 6,483,558 | 6,655,505 | 7,407,981 | 2,770,256 | 2,704,487 | 2,574,653 |
| Income balance transferred to profit and loss | [1] 10,920,263 | [1] 15,176,434 | [1] 22,097,059 | [1] 15,371,124 | [1] 27,490,051 | [1] 27,358,956 | [1] 19,664,351 |
| Profit and loss: | | | | | | | |
| Credits: | | | | | | | |
| Credit balance at beginning of year | 38,715,654 | 39,946,717 | 46,167,686 | 58,668,535 | 67,216,645 | 80,041,137 | 90,745,827 |
| Credit or debit balance transferred from income | [3] 10,920,263 | [3] 15,176,434 | [3] 22,097,059 | [3] 15,371,124 | [3] 27,490,051 | [3] 27,358,956 | [3] 19,664,351 |
| Credits from retired road and equipment | 20,670 | 366,508 | 63,000 | 1,665,386 | 108,032 | 238,633 | 32,984 |
| Unrefundable overcharges | 148,884 | 107,054 | 122,010 | 95,281 | 24,121 | 46,201 | 24,037 |
| Donations | 215,063 | 166,537 | 127,793 | [4] 6,241 | 230,781 | 98,449 | 199,166 |
| Miscellaneous credits | [5] 1,932,883 | [6] 403,684 | [7] 624,112 | [3] 591,983 | [6] 258,379 | [9] 1,472,495 | [3] 119,820 |
| Total credits | [3] 13,237,763 | [3] 16,220,217 | [3] 23,033,974 | [3] 17,717,533 | [3] 28,111,364 | [3] 29,214,734 | [3] 20,040,358 |
| Debits: | | | | | | | |
| Surplus applied to sinking and other reserve funds | 2,390 | 2,450 | 2,002 | 1,198 | 910 | 3,049 | 1,573 |
| Dividend appropriations of surplus [12] | 5,023,636 | 4,918,634 | 6,258,090 | 7,346,129 | 13,851,275 | 16,307,783 | 18,670,687 |
| Surplus appropriated for investment in physical property | 215,063 | 166,537 | 127,793 | [3] 6,241 | 230,781 | 98,449 | 199,166 |
| Debt discount extinguished through surplus | 5,200,052 | 3,407,566 | 2,970,821 | 163,354 | 19,567 | 766,166 | 4,893,135 |
| Debits from retired road and equipment | 760,497 | 1,089,696 | 727,366 | 657,763 | 886,259 | 992,620 | 861,632 |
| Miscellaneous debits | [3] 805,062 | [3] 414,365 | [13] 447,053 | [14] 1,007,220 | [6] 298,080 | [6] 341,977 | [3] 240,445 |
| Total debits | 12,006,700 | 9,999,248 | 10,533,125 | 9,169,423 | 15,286,872 | 18,510,044 | 24,866,638 |
| Net credit or debit balance | [3] 1,231,063 | [3] 6,220,969 | [3] 12,500,849 | [3] 8,548,110 | [3] 12,824,492 | [3] 10,704,690 | [4] 4,826,280 |
| Credit balance carried to balance sheet | 39,946,717 | 46,167,686 | 58,668,535 | 67,216,645 | 80,041,137 | 90,745,827 | 85,919,547 |

| | 1931 | 1932 | 1933 | 1934 | 1935 | 1936 | 1937 | Aug. 31, 1938 |
|---|---|---|---|---|---|---|---|---|
| Net income or deficit | [1] $3,427,662 | [2] $6,334,978 | [1] $204,772 | [3] $3,825,752 | [3] $3,180,909 | [1] $4,538,975 | [3] $720,695 | [3] $12,864,963 |
| Disposition of net income: | | | | | | | | |
| Income applied to sinking and other reserve funds | 58,630 | 269,230 | 147,187 | 133,579 | 81,024 | 75,621 | 55,394 | 31,070 |
| Dividend appropriations of income [12] | 2,354,528 | | | | | | | |
| Total | 2,413,158 | 269,230 | 147,187 | 133,579 | 81,024 | 75,621 | 55,394 | 31,070 |
| Income balance transferred to profit and loss | [1] 1,014,504 | [3] 6,604,208 | [1] 57,585 | [3] 3,959,331 | [3] 3,261,933 | [1] 4,463,354 | [3] 776,089 | [3] 12,896,033 |
| Profit and loss: | | | | | | | | |
| Credits: | | | | | | | | |
| Credit balance at beginning of year | 85,919,547 | 75,825,552 | 66,913,405 | 59,869,775 | 48,702,507 | 40,993,721 | 40,276,272 | 38,938,653 |
| Credit or debit balance transferred from income | [3] 1,014,504 | [4] 6,604,208 | [3] 57,585 | [4] 3,959,331 | [4] 3,261,933 | [3] 4,463,354 | [4] 776,089 | [4] 12,896,033 |
| Credits from retired road and equipment | 19,721 | 682,689 | 6,007 | 2,404 | [4] 2,127 | 29,549 | 18,116 | 30,383 |
| Delayed income credits | | | | 481,911 | | | 2,135,651 | |
| Unrefundable overcharges | 16,736 | 14,017 | 15,268 | 12,874 | 11,354 | | | |
| Donations | 144,246 | 78,202 | 45,973 | 105,857 | 124,116 | 213,482 | 34,044 | 401,282 |
| Miscellaneous credits | [6] 334,974 | [3] 229,822 | [6] 311,681 | [10] 2,743,385 | [6] 163,129 | [6] 180,408 | [11] 811,720 | [6] 140,596 |
| Total credits | [3] 1,530,181 | [4] 5,599,478 | [3] 436,514 | [4] 612,900 | [4] 2,965,461 | [3] 4,886,793 | [3] 2,223,442 | [4] 12,323,772 |
| Debits: | | | | | | | | |
| Surplus applied to sinking and other reserve funds | 108,940 | 2,061,998 | 188,533 | 172,738 | 156,730 | 84,070 | 156,142 | 123,489 |
| Dividend appropriations of surplus [12] | 10,240,341 | | | | | | | |
| Surplus appropriated for investment in physical property | 144,246 | 78,202 | 45,973 | 105,857 | 124,116 | 213,482 | 34,044 | 401,282 |
| Debt discount extinguished through surplus | 168,776 | 70,660 | 234,536 | 618,031 | 29,469 | 2,636 | 1,035,746 | |
| Miscellaneous appropriations of surplus | | | | | | | 44,496 | |
| Debits from retired road and equipment | 773,665 | 520,676 | 2,093,497 | 3,648,354 | 1,654,813 | 1,192,568 | 1,637,788 | 1,270,401 |
| Delayed income debits | | | 4,595,451 | 192,904 | 96,800 | 94,737 | | |
| Miscellaneous debits | [6] 188,208 | [6] 581,133 | [3] 322,154 | [15] 5,816,484 | [16] 2,681,397 | [17] 4,016,749 | [6] 652,845 | [6] 190,818 |
| Total debits | 11,624,176 | 3,312,669 | 7,480,144 | 10,554,368 | 4,743,325 | 5,604,242 | 3,561,061 | 1,985,990 |
| Net credit or debit balance | [4] 10,093,995 | [4] 8,912,147 | [4] 7,043,630 | [4] 11,167,268 | [4] 7,708,786 | [4] 717,449 | [4] 1,337,619 | [4] 14,309,762 |
| Credit balance carried to balance sheet | 75,825,552 | 66,913,405 | 59,869,775 | 48,702,507 | 40,993,721 | 40,276,272 | 38,938,653 | 24,628,891 |

[1] Income.
[2] Deficit.
[3] Credit.
[4] Debit.
[5] Includes $1,615,021 profit on sale of S. V. & E. H. R. R. Co.
[6] Includes no item of as much as $250,000.
[7] Includes $474,749 profit on sale of miscellaneous physical property.
[8] Includes $477,919 profit on sale of miscellaneous physical property.
[9] Includes $1,202,685 profit on sale of W. & L. E. Ry. Co. stock.
[10] Includes $2,563,594 cancelation of indebtedness to company's insurance fund.
[11] Includes $756,000 adjustment to face value of B. R. & P. Ry. Co. bonds acquired.
[12] From 1924 to 1927 inclusive, all preferred stock dividends and 1 common stock dividend were appropriated out of income and thereafter all common stock dividends were appropriated out of surplus.
[13] Includes $286,000 redemption premium on equipment obligations called.
[14] Includes $879,487 redemption premium on secured notes called.
[15] Includes $3,151,971 advances to Alton R. R. Co. charged off.
[16] Includes $2,112,750 advances to Alton R. R. Co. charged off.
[17] Includes $1,892,515 extraordinary flood expenditures.

SCHEDULE 4.—*The Baltimore & Ohio Railroad Co., Buffalo, Rochester & Pittsburgh Railway Co., the Cincinnati, Indianapolis & Western Railroad Co., Buffalo & Susquehanna Railroad Corporation consolidated general balance sheet as of June 30, 1938, adjusted to include all items shown in Schedule 1 of the plan*

| | The Baltimore & Ohio Railroad Co. | Buffalo, Rochester & Pittsburgh Railway Co. | The Cincinnati, Indianapolis & Western Railroad Co. | Buffalo & Susquehanna Railroad Corporation | Combined total | Intercompany eliminations | Consolidated total |
|---|---|---|---|---|---|---|---|
| **ASSETS** | | | | | | | |
| Investments: | | | | | | | |
| Investment in road and equipment: | | | | | | | |
| Road | $307,613,641 | $41,194,157 | $14,012,079 | $7,330,126 | $370,150,003 | | $370,150,003 |
| Equipment | 251,127,168 | 14,794,555 | | 1,546,168 | 267,467,891 | | 267,467,891 |
| Total | 558,740,809 | 55,988,712 | 14,012,079 | 8,876,294 | 637,617,894 | | 637,617,894 |
| Improvements on leased railway property | | 2,288,975 | | 36,562 | 2,325,537 | | 2,325,537 |
| Perpetual leaseholds—capitalized | 3,707,550 | 6,742,650 | | | 10,450,200 | | 10,450,200 |
| Sinking funds—including bonds held therein | 460,430 | | | 3,766,247 | 4,226,677 | | 4,226,677 |
| Deposits in lieu of mortgaged property sold | 9,804 | | | | 9,804 | | 9,804 |
| Miscellaneous physical property | 11,395,796 | 353,142 | 109,852 | 28,574 | 11,887,364 | | 11,887,364 |
| Investments in affiliated companies: | | | | | | | |
| Stocks | 122,438,994 | 179,008 | | 387,700 | 123,005,702 | $25,193,549 | 97,812,153 |
| Bonds | 293,137,151 | | | 1,473,884 | 294,611,035 | | 294,611,035 |
| Notes | 2,544,332 | | | | 2,544,332 | | 2,544,332 |
| Advances | 74,625,306 | | | | 74,625,306 | 45,884,219 | 28,741,087 |
| Other investments: | | | | | | | |
| Stocks | 93,803,469 | | | | 93,803,469 | | 93,803,469 |
| Bonds | 7,538,358 | | | | 7,538,358 | | 7,538,358 |
| Notes | 1,912,200 | | | | 1,912,200 | | 1,912,200 |
| Advances | 1,340,233 | | | | 1,340,233 | | 1,340,233 |
| Miscellaneous | 461,959 | | | | 461,959 | | 461,959 |
| B. & O. C. T. R. R. Co. real estate mortgage | 650,000 | | | | 650,000 | | 650,000 |
| Total | 1,172,766,391 | 65,552,487 | 14,121,931 | 14,569,261 | 1,267,010,070 | 71,077,768 | 1,195,932,302 |
| Current assets: | | | | | | | |
| Cash | 6,549,880 | | | | 6,549,880 | | 6,549,880 |
| Special deposits | 341,410 | | | | 341,410 | | 341,410 |
| Loans and bills receivable | 72,683 | | | | 72,683 | | 72,683 |
| Traffic and car service balances | 1,267,306 | | | | 1,267,306 | | 1,267,306 |
| Receivable from agents and conductors | 1,427,716 | | | | 1,427,716 | | 1,427,716 |
| Miscellaneous accounts receivable | 3,623,735 | | | | 3,623,735 | | 3,623,735 |
| Materials and supplies | 9,156,785 | | | | 9,156,785 | | 9,156,785 |
| Interest and dividends receivable | 2,119,010 | | | | 2,119,010 | | 2,119,010 |
| Other current assets | 31,046 | | | | 31,046 | | 31,046 |
| Total | 24,589,571 | | | | 24,589,571 | | 24,589,571 |
| Deferred assets: | | | | | | | |
| Working fund advances | 158,245 | | | | 158,245 | | 158,245 |
| Insurance and other funds | 1,363,746 | | | | 1,363,746 | | 1,363,746 |
| Other deferred assets | 2,821,926 | 6,981,467 | 919,706 | 2,097,493 | 12,820,592 | 9,642,274 | 3,178,318 |
| Total | 4,343,917 | 6,981,467 | 919,706 | 2,097,493 | 14,342,583 | 9,642,274 | 4,700,309 |
| Unadjusted debits: | | | | | | | |
| Discount on funded debt | 431 | | | | 431 | | 431 |
| Other unadjusted debits | 3,023,039 | 1 | | | 3,023,040 | | 3,023,040 |
| Total | 3,023,470 | 1 | | | 3,023,471 | | 3,023,471 |
| Grand totals | 1,204,723,349 | 72,533,955 | 15,041,637 | 16,666,754 | 1,308,965,695 | 80,720,042 | 1,228,245,653 |
| **LIABILITIES** | | | | | | | |
| Stock: | | | | | | | |
| Capital stock | 315,158,485 | 16,498,700 | 10,700,000 | 7,000,000 | 349,357,185 | 34,031,650 | 315,325,535 |
| Premium on capital stock | 3,355,721 | | | | 3,355,721 | | 3,355,721 |
| Total | 318,514,206 | 16,498,700 | 10,700,000 | 7,000,000 | 352,712,906 | 34,031,650 | 318,681,256 |
| Governmental grants: Grants in aid of construction | 443,468 | | | | 443,468 | | 443,468 |
| Long-term debt: | | | | | | | |
| Funded debt—included in plan | 669,503,678 | 34,647,000 | 4,675,000 | 2,824,800 | 711,650,478 | 42,146,300 | 669,504,178 |
| Bonds in sinking fund, included in plan | 456,000 | | | 3,765,700 | 4,221,700 | | 4,221,700 |
| Leased lines obligations, included in plan | 3,707,550 | 6,742,650 | | | 10,450,200 | | 10,450,200 |
| B. & O. C. T. R. R. Co. mortgage, included in plan | 650,000 | | | | 650,000 | | 650,000 |
| Total debt, included in plan | 674,317,228 | 41,389,650 | 4,675,000 | 6,590,500 | 726,972,378 | 42,146,300 | 684,826,078 |
| Miscellaneous unfunded obligations, not included in plan | 3,866,793 | | | | 3,866,793 | | 3,866,793 |
| Nonnegotiable debt to affiliated companies | | 2,268,436 | 1,414,848 | 54,635 | 3,737,919 | 3,737,919 | |
| Total | 678,184,021 | 43,658,086 | 6,089,848 | 6,645,135 | 734,577,090 | 45,884,219 | 688,692,871 |
| Current liabilities: | | | | | | | |
| Loans and bills payable | 1,900,000 | | | | 1,900,000 | | 1,900,000 |
| Traffic and car service balances | 3,634,027 | | | | 3,634,027 | | 3,634,027 |
| Audited accounts and wages payable | 13,039,749 | | | | 13,039,749 | | 13,039,749 |
| Miscellaneous accounts payable | 2,456,803 | | | | 2,456,803 | | 2,456,803 |
| Interest matured unpaid | 2,881,366 | | | | 2,881,366 | | 2,881,366 |
| Dividends matured unpaid | 83,873 | | | | 83,873 | | 83,873 |
| Funded debt matured unpaid | 617,300 | | | | 617,300 | | 617,300 |
| Unmatured interest accrued | 6,522,181 | | | | 6,522,181 | | 6,522,181 |
| Unmatured rents accrued | 83,082 | | | | 83,082 | | 83,082 |
| Other current liabilities | 850,598 | | | | 850,598 | | 850,598 |
| Total | 32,068,979 | | | | 32,068,979 | | 32,068,979 |

SCHEDULE 4.—*The Baltimore & Ohio Railroad Co., Buffalo, Rochester & Pittsburgh Railway Co., The Cincinnati, Indianapolis & Western Railroad Co., Buffalo & Susquehanna Railroad Corporation consolidated general balance sheet as of June 30, 1938, adjusted to include all items shown in Schedule 1 of the plan*—Continued

| | The Baltimore & Ohio Railroad Co. | Buffalo, Rochester & Pittsburgh Railway Co. | The Cincinnati, Indianapolis & Western Railroad Co. | Buffalo & Susquehanna Railroad Corporation | Combined total | Intercompany eliminations | Consolidated total |
|---|---|---|---|---|---|---|---|
| Deferred liabilities: | | | | | | | |
| Liability for provident funds | $2,843,884 | | | | $2,843,884 | | $2,843,884 |
| Other deferred liabilities | 15,238,784 | $1,653,556 | | | 16,892,340 | $9,642,274 | 7,250,066 |
| Total | 18,082,668 | 1,653,556 | | | 19,736,224 | 9,642,274 | 10,093,950 |
| Unadjusted credits: | | | | | | | |
| Tax liability | 1,404,533 | | | | 1,404,533 | | 1,404,533 |
| Insurance and casualty reserves | 1,788,746 | | | | 1,788,746 | | 1,788,746 |
| Accrued depreciation, road | 91,550,010 | 239,475 | | | 239,475 | | 239,475 |
| Accrued depreciation, equipment | 3,233,438 | 7,414,416 | | $1,022,587 | 99,987,022 | | 99,987,022 |
| Other unadjusted credits | | | | 11,123 | 3,244,561 | | 3,244,561 |
| Total | 97,976,736 | 7,653,891 | | 1,033,710 | 106,664,337 | | 106,664,337 |
| Corporate surplus: | | | | | | | |
| Additions to property through income and surplus | 27,659,179 | 4,745,377 | $78,720 | 12,307 | 32,495,583 | | 32,495,583 |
| Sinking fund reserves | 460,429 | | | 3,766,247 | 4,226,676 | | 4,226,676 |
| Profit and loss | [1] 31,333,663 | [1] 1,675,655 | [1] 1,826,931 | [1] 1,790,645 | [1] 26,040,432 | | [1] 26,040,432 |
| Difference between par value of securities of operated subsidiaries and cost to B. & O. R. R. Co. | | | | | | [1] 8,838,101 | [1] 8,838,101 |
| Total | 59,453,271 | 3,069,722 | [2] 1,748,211 | 1,987,909 | 62,762,691 | [1] 8,838,101 | 71,600,79 |
| Grand totals | 1,204,723,349 | 72,533,955 | 15,041,637 | 16,666,754 | 1,308,965,695 | 80,720,042 | 1,228,245,653 |

[1] Credit.
[2] Debit.



SCHEDULE 5.—*Form of certificate of deposit for Southwestern Division bonds, refunding bonds, 4½% secured notes, and Buffalo and Susquehanna bonds*

No. --------

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CERTIFICATE OF DEPOSIT

FOR

BONDS

OF

COMPANY

DEPOSITED UNDER A PLAN OF THE BALTIMORE AND OHIO RAILROAD COMPANY FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938

Company (hereinafter called the Company) hereby certifies that , or a predecessor in interest, has deposited under the Plan of The Baltimore and Ohio Railroad Company for Modification of Interest Charges and Maturities, dated August 15, 1938 (hereinafter called the Plan), $ principal amount of bonds of the issue designated above with all appurtenant coupons, if any, maturing after January 1, 1939, and has assented to the Plan, and that the registered owner hereof is entitled in respect thereof to the rights provided in the Plan, and is bound by the Plan and said assent thereto, subject as hereinafter stated.

As provided in the Plan, the registered owner hereof will be entitled to receive, without expense, upon consummation of the Plan and upon surrender hereof, the bond or bonds so deposited, appropriately stamped in accordance with the Plan, and, if in coupon form, with coupons attached representing interest payable in accordance with the Plan.

If the Plan shall be abandoned the registered owner hereof will be entitled to receive, without expense, upon surrender hereof, the bond or bonds so deposited, with all unpaid appurtenant coupons, if any, maturing after January 1, 1939.

If the Plan shall be modified or amended, notice of such modification or amendment will be given as provided in the Plan, and if any such modification or amendment affects the bonds of said issue, the registered owner hereof will be entitled, without expense, upon surrender hereof, within thirty days after the first publication of such notice, to receive the bond or bonds so deposited, with all unpaid appurtenant coupons, if any, maturing after January 1, 1939. If this Certificate is not so surrendered within said thirty-day period the registered owner and all subsequent registered owners hereof shall be deemed to have consented to such modification or amendment, and will be bound thereby with like effect as if such modification or amendment had been part of the Plan prior to their assent thereto.

The registered owner hereof, upon surrender hereof at any time after December 31, 1938, and before the Plan shall have been declared operative, and upon payment of the reasonable charges and expenses of the Agent named below for its services in connection with the withdrawal of such bonds, will be entitled to receive the bond or bonds so deposited, with all unpaid appurtenant coupons, if any, maturing after January 1, 1939.

If prior to the consummation of the Plan any interest is paid by the Company on the bonds of said issue for any period represented by a coupon or interest claim appurtenant to deposited bonds of such issue, the Agent holding the deposited bonds will surrender the appropriate appurtenant coupons, if any, and collect such interest and will pay such interest to the registered owners of Certificates of record on such date as said Agent may determine.

If this Certificate represents a fully registered bond or bonds the registered owner hereof may, at his election, whenever he shall be entitled hereunder to receive such bond or bonds, require the delivery to him, in lieu thereof, of a coupon bond or bonds of said issue, for the same aggregate principal amount, bearing coupons for interest from the date to which interest has been paid on such fully registered bond or bonds.

If this Certificate represents more than $1,000 principal amount of bonds the registered owner hereof may, at any time, upon surrender of this Certificate, receive in lieu thereof Certificates, registered in his name, each representing $1,000 principal amount of the bonds represented by this Certificate.

This Certificate and the interest represented hereby is transferable subject to such rules and regulations as the Company may adopt, upon the books of the Company at the office of the undersigned Agent, by the registered owner hereof or by his duly authorized attorney, upon surrender of this Certificate properly

endorsed for transfer. This Certificate is issued subject to the condition and every registered owner hereof consents and agrees that title to this Certificate when properly endorsed, and the interest represented hereby, shall be transferable with the same effect as in the case of a negotiable instrument; but the Company and said Agent may treat the registered owner hereof, or, when presented properly endorsed in blank, the bearer hereof, as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

NEW YORK, N. Y. ----------

COMPANY.

by

*Agent.*

by

*Authorized Officer.*

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*Form of certificate of deposit for convertible bonds and C. I. & W. bonds, and for P. L. E. & W. Va. bonds, first mortgage bonds, B. R. & P. consolidated bonds and L. P. & C. bonds in coupon form*

No.-------- $--------

CERTIFICATE OF DEPOSIT
FOR
BONDS
OF
COMPANY

DEPOSITED UNDER A PLAN OF THE BALTIMORE AND OHIO RAILROAD COMPANY FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938

Company (hereinafter called the Company) hereby certifies that , or a predecessor in interest, has deposited under the Plan of The Baltimore and Ohio Railroad Company for Modification of Interest Charges and Maturities, dated August 15, 1938 (hereinafter called the Plan), $ principal amount of bonds of the issue designated above with all appurtenant coupons maturing after January 1, 1939, and has assented to the Plan, and that the registered owner hereof is entitled in respect thereof to the rights provided in the Plan, and is bound by the Plan and said assent thereto, subject as hereinafter stated.

As provided in the Plan, the registered owner hereof will be entitled to receive, without expense, upon consummation of the Plan and upon surrender hereof, the bond or bonds so deposited, appropriately stamped in accordance with the Plan, and, with coupons attached representing interest payable in accordance with the Plan.

If the Plan shall be abandoned the registered owner hereof will be entitled to receive, without expense, upon surrender hereof, the bond or bonds so deposited, with all unpaid appurtenant coupons maturing after January 1, 1939.

If the Plan shall be modified or amended, notice of such modification or amendment will be given as provided in the Plan, and if any such modification or amendment affects the bonds of said issue, the registered owner hereof will be entitled, without expense, upon surrender hereof, within thirty days after the first publication of such notice, to receive the bond or bonds so deposited, with all unpaid appurtenant coupons maturing after January 1, 1939. If this Certificate is not so surrendered within said thirty-day period the registered owner and all subsequent registered owners hereof shall be deemed to have consented to such modification or amendment, and will be bound thereby with like effect as if such modification or amendment had been part of the Plan prior to their assent thereto.

The registered owner hereof, upon surrender hereof at any time after December 31, 1938, and before the Plan shall have been declared operative, and upon payment of the reasonable charges and expenses of the Agent named below for its services in connection with the withdrawal of such bonds, will be entitled to receive the bond or bonds so deposited, with all unpaid appurtenant coupons maturing after January 1, 1939.

If prior to the consummation of the Plan any interest is paid by the Company on the bonds of said issue for any period represented by a coupon appurtenant to deposited bonds of such issue, the Agent named below will surrender the appropriate appurtenant coupons and collect such interest and will pay such interest to the registered owners of Certificates of record on such date as said Agent may determine.



If this Certificate represents more than $1,000 principal amount of bonds the registered owner hereof may, at any time, upon surrender of this Certificate, receive in lieu thereof Certificates, registered in his name, each representing $1,000 principal amount of the bonds represented by this Certificate.

This Certificate and the interest represented hereby is transferable subject to such rules and regulations as the Company may adopt, upon the books of the Company at the office of the undersigned Agent, by the registered owner hereof or by his duly authorized attorney, upon surrender of this Certificate properly endorsed for transfer. This Certificate is issued subject to the condition and every registered owner hereof consents and agrees that title to this Certificate when properly endorsed, and the interest represented hereby, shall be transferable with the same effect as in the case of a negotiable instrument; but the Company and said Agent may treat the registered owner hereof, or, when presented properly endorsed in blank, the bearer hereof, as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

NEW YORK, N. Y. ----------

COMPANY.

by

*Agent.*

by

*Authorized Officer.*

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*Form of Certificate of Deposit for P. L. E. & W. Va. Bonds, First Mortgage Bonds, B. R. & P. Consolidated Bonds and L. P. & C. Bonds in fully registered form*

No. --------

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CERTIFICATE OF DEPOSIT
FOR
BONDS
OF
COMPANY

DEPOSITED UNDER A PLAN OF THE BALTIMORE AND OHIO RAILROAD COMPANY FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938

Company (hereinafter called the Company) hereby certifies that , or a predecessor in interest, has deposited under the Plan of The Baltimore and Ohio Railroad Company for Modification of Interest Charges and Maturities, dated August 15, 1938 (hereinafter called the Plan), $ principal amount of bonds of the issue designated above, in fully registered form, and has assented to the Plan, and that the registered owner hereof is entitled in respect thereof to the rights provided in the Plan, and is bound by the Plan and said assent thereto, subject as hereinafter stated.

As provided in the Plan, the registered owner hereof will be entitled to receive, without expense, upon consummation of the Plan and upon surrender hereof, the bond or bonds so deposited, appropriately stamped in accordance with the Plan.

If the Plan shall be abandoned the registered owner hereof will be entitled to receive, without expense, upon surrender hereof, the bond or bonds so deposited.

If the Plan shall be modified or amended, notice of such modification or amendment will be given as provided in the plan, and if any such modification or amendment affects the bonds of said issue, the registered owner hereof will be entitled, without expense, upon surrender hereof, within thirty days after the first publication of such notice, to receive the bond or bonds so deposited. If this Certificate is not so surrendered within said thirty-day period the registered owner and all subsequent registered owners hereof shall be deemed to have consented to such modification or amendment, and will be bound thereby with like effect as if such modification or amendment had been part of the Plan prior to their assent thereto.

The registered owner hereof, upon surrender hereof at any time after December 31, 1938, and before the Plan shall have been declared operative, and upon payment of the reasonable charges and expenses of the Agent named below for its services in connection with the withdrawal of such bonds, will be entitled to receive the bond or bonds so deposited.

If prior to the consummation of the Plan any interest is paid by the Company on the bonds of said issue for any period represented by an interest claim appurtenant to deposited bonds of such issue, the Agent named below will collect such interest and will pay such interest to the registered owners of Certificates of record on such date as said Agent may determine.

This Certificate and the interest represented hereby is transferable subject to such rules and regulations as the Company may adopt, upon the books of the Company at the office of the undersigned Agent, by the registered owner hereof or by his duly authorized attorney, upon surrender of this Certificate properly endorsed for transfer. This Certificate is issued subject to the condition and every registered owner hereof consents and agrees that title to this Certificate when properly endorsed, and the interest represented hereby, shall be transferable with the same effect as in the case of a negotiable instrument; but the Company and said Agent may treat the registered owner hereof, or, when presented properly endorsed in blank, the bearer hereof, as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

NEW YORK, N. Y. ----------

COMPANY.

by

*Agent.*

by

*Authorized Officer.*

(To be signed and returned with deposited securities)

THE BALTIMORE AND OHIO RAILROAD COMPANY—LETTER OF TRANSMITTAL AND ASSENT TO PLAN OF THE BALTIMORE AND OHIO RAILROAD COMPANY FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938

----------, 1938.

(Leave Blank)
Ticket No------

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Care of
,
Agent,

----------; ----------

Dear SIRS: The undersigned hereby acknowledges receipt of a copy of said Plan. The undersigned is the owner of, and herewith deposits under said Plan, $ principal amount of Bonds (hereinafter called the Bonds) as follows:

| *Principal Amounts* | *Bond Numbers* |
|---|---|
| $---------- | ---------- |
| $---------- | ---------- |
| $---------- | ---------- |

which Bonds, if in coupon form, have all appurtenant coupons maturing after January 1, 1939, attached.

Please issue transferable Certificate(s) of Deposit in respect of the Bonds as provided in said Plan, registered in the name of:

*Name* ----------
(Please type or print, giving first or middle name in full)

*Address* ----------
(Street and number)

----------
(City) (State)

Please deliver said Certificate(s) of Deposit

☐ By registered mail

or

☐ Against counter receipt

Fill in this space ONLY if delivery is NOT to be made to the name and address indicated above.

*Name* ----------
(Please type or print)

*Address* ----------
(Street and number)

----------
(City) (State)



The undersigned hereby assents to said Plan in respect of the Bonds and agrees to be bound by the provisions thereof, subject to the right of withdrawal specified in said Plan and in the Certificate(s) of Deposit to be issued thereunder.

It is understood and agreed that if the Certificate(s) of Deposit issued in respect of the Bonds shall be surrendered and the Bonds withdrawn from deposit in accordance with the provisions of said Plan and said Certificate(s) of Deposit, this Assent shall thereby be revoked.

It is understood that if The Baltimore and Ohio Railroad Company shall so determine, said Plan may be carried out through proceedings under Section 77 of the Bankruptcy Act or other similar law at the time in force or through such other legal proceedings as said Company may deem appropriate to bind non-assenting security holders. It is agreed that this assent will be effective as an acceptance of said Plan in any such legal proceedings as fully as if this assent had been executed after the institution of such proceedings and after the submission therein of a plan to the security holders for their acceptance or rejection, and the undersigned hereby constitutes and appoints said Company his duly authorized attorney and representative to accept said Plan in such proceedings in his behalf, in either case subject to the withdrawal rights permitted by said Plan.

Yours very truly,

----------
(Name)

*Please read and carefully observe the instructions on the reverse hereof*

INSTRUCTIONS

1. A separate letter of assent must be used for each issue of bonds which you own.

2. Complete this letter and assent and send it, together with your Bonds, to the Company at the address indicated. The method of delivery is optional but registered, insured mail is suggested.

3. Your Bonds, if in coupon form, must bear all appurtenant coupons maturing after January 1, 1939. Coupons maturing on or before January 1, 1939, should be detached before the Bonds are forwarded for deposit and presented for payment on their due date.

4. If a Bond is registered it must be accompanied by a duly executed instrument of assignment in blank, the signature to which must correspond with the name in which the Bond is registered without alteration, enlargement, or any change whatever. Such signature must be guaranteed by a bank or trust company (not a savings bank) having an office or correspondent in the City of New York or by a firm having membership in the New York Stock Exchange. The Bond itself should not be endorsed.

5. If a certificate of deposit for a registered Bond is to be registered in a name other than that of the registered holder of the Bond or if a certificate of deposit for a bearer Bond is to be registered in a name other than that of the owner thereof, indicating that a taxable transfer has taken place, the Bond must be accompanied by funds (or tax stamps) in the amount of any Federal (40 cents per $1,000) transfer taxes payable in respect thereof or by satisfactory evidence that all such transfer taxes have been duly paid or that no such transfer taxes are payable.

6. Separate letters of transmittal and assents must be prepared for each name in which a certificate of deposit is to be issued.

7. If deposits are made by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations, or others acting in a fiduciary or representative capacity proper evidence of appointment and authority to make the deposit must accompany the Bonds.

8. If you will enclose with your Bonds a memorandum of your ordinary expenses in forwarding the Bonds for deposit, including cost of registration and insurance, the Company will promptly reimburse you.

9. If your Bonds are held by a bank or broker, it is suggested that you ask such bank or broker to forward your Bonds, with this assent signed by you.

(Duplicate—for retention by security holders)

THE BALTIMORE AND OHIO RAILROAD COMPANY—LETTER OF TRANSMITTAL AND ASSENT TO PLAN OF THE BALTIMORE AND OHIO RAILROAD COMPANY FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938

----------, 1938.

(Leave Blank)
Ticket No_____

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Care of , Agent,
----------, ----------

Dear SIRS: The undersigned hereby acknowledges receipt of a copy of said Plan. The undersigned is the owner of, and herewith deposits under said Plan, $ principal amount of Bonds (hereinafter called the Bonds) as follows:

| *Principal Amounts* | *Bond Numbers* |
|---|---|
| $---------- | ---------- |
| $---------- | ---------- |
| $---------- | ---------- |

which Bonds, if in coupon form, have all appurtenant coupons maturing after January 1, 1939, attached.

Please issue transferable Certificate(s) of Deposit in respect of the Bonds as provided in said Plan, registered in the name of:

*Name* ----------
(Please type or print, giving first or middle name in full)
*Address* ----------
(Street and number)
----------
(City) (State)

Please deliver said Certificate(s) of Deposit
☐ By registered mail
or
☐ Against counter receipt

Fill in this space ONLY if delivery is NOT to be made to the name and address indicated above.

*Name* ----------
(Please type or print)
*Address* ----------
(Street and number)
----------
(City) (State)

The undersigned hereby assents to said Plan in respect of the Bonds and agrees to be bound by the provisions thereof, subject to the right of withdrawal specified in said Plan and in the Certificate(s) of Deposit to be issued thereunder.

It is understood and agreed that if the Certificate(s) of Deposit issued in respect of the Bonds shall be surrendered and the Bonds withdrawn from deposit in accordance with the provisions of said Plan and said Certificate(s) of Deposit, this Assent shall thereby be revoked.

It is understood that if The Baltimore and Ohio Railroad Company shall so determine, said Plan may be carried out through proceedings under Section 77 of the Bankruptcy Act or other similar law at the time in force or through such other legal proceedings as said Company may deem appropriate to bind non-assenting security holders. It is agreed that this assent will be effective as an acceptance of said Plan in any such legal proceedings as fully as if this assent had been executed after the institution of such proceedings and after the submission therein of a plan to the security holders for their acceptance or rejection, and the undersigned hereby constitutes and appoints said Company his duly authorized



attorney and representative to accept said Plan in such proceedings in his behalf, in either case subject to the withdrawal rights permitted by said Plan.

Yours very truly,

----------
(Name)

*Please read and carefully observe the instructions on the reverse hereof*

INSTRUCTIONS

1. A separate letter of assent must be used for each issue of bonds which you own.
2. Complete this letter and assent and send it, together with your Bonds, to the Company at the address indicated. The method of delivery is optional but registered, insured mail is suggested.
3. Your Bonds, if in coupon form, must bear all appurtenant coupons maturing after January 1, 1939. Coupons maturing on or before January 1, 1939, should be detached before the Bonds are forwarded for deposit and presented for payment on their due date.
4. If a Bond is registered it must be accompanied by a duly executed instrument of assignment in blank, the signature to which must correspond with the name in which the Bond is registered without alteration, enlargement, or any change whatever. Such signature must be guaranteed by a bank or trust company (not a savings bank) having an office or correspondent in the City of New York or by a firm having membership in the New York Stock Exchange. The Bond itself should not be endorsed.
5. If a certificate of deposit for a registered Bond is to be registered in a name other than that of the registered holder of the Bond or if a certificate of deposit for a bearer Bond is to be registered in a name other than that of the owner thereof, indicating that a taxable transfer has taken place, the Bond must be accompanied by funds (or tax stamps) in the amount of any Federal (40 cents per $1,000) transfer taxes payable in respect thereof or by satisfactory evidence that all such transfer taxes have been duly paid or that no such transfer taxes are payable.
6. Separate letters of transmittal and assents must be prepared for each name in which a certificate of deposit is to be issued.
7. If deposits are made by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations, or others acting in a fiduciary or representative capacity proper evidence of appointment and authority to make the deposit must accompany the Bonds.
8. If you will enclose with your Bonds a memorandum of your ordinary expenses in forwarding the Bonds for deposit, including cost of registration and insurance, the Company will promptly reimburse you.
9. If your Bonds are held by a bank or broker, it is suggested that you ask such bank or broker to forward your Bonds, with this assent signed by you.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
*Baltimore, Md., November 3rd, 1938.*

*To Holders of*

- Pittsburgh, Lake Erie and West Virginia 4% bonds, due November 1, 1941
- Five year 4½% secured notes, due August 1, 1939
- First mortgage 5% bonds
- Southwestern division bonds
- Refunding and general mortgage bonds
- Convertible 4½% bonds

} of the Baltimore and Ohio Railroad Company;

- Consolidated mortgage bonds of the Buffalo, Rochester and Pittsburgh Railway Company;
- First mortgage 5% bonds, due January 1, 1939, of the Lincoln Park and Charlotte Railroad Company;
- First mortgage bonds of the Buffalo and Susquehanna Railroad Corporation;
- First mortgage bonds of the Cincinnati, Indianapolis and Western Railroad Company.

The Baltimore and Ohio Railroad Company has proposed a Plan for Modification of Interest Charges and Maturities, dated August 15, 1938. A copy of the Plan is enclosed and your attention is invited thereto.

The Plan proposes the extension of certain maturing obligations and the modification of interest charges on certain of the indebtedness of the Company and its

operated subsidiaries. The details of the proposed changes are set out in the Plan, to which reference is made.

As more fully set out in the Introductory Statement to the Plan, it is essential, in view of depressed business conditions resulting in reduced earnings, and of increased operating costs, and approaching large maturities, that fixed interest charges be reduced, at least for such time as will provide a reasonable opportunity for reestablishment of earnings and credit, and that suitable provision be made for nearby maturities. The management believes that it is in the interest of security holders and the public to make the necessary modifications of interest charges and maturities by voluntary agreement with the security holders and therefore has proposed the Plan.

The issuance of certificates of deposit and new or modified securities in accordance with the Plan has been authorized by the Interstate Commerce Commission under Section 20a of the Interstate Commerce Act by an order dated November 1, 1938, but the Commission has not yet passed upon the extension of the Notes held by the Reconstruction Finance Corporation or the modification of the agreements with the operated subsidiaries, both of which are subject to its jurisdiction under other provisions of law.

Prompt acceptance of the Plan is essential in order to carry out the Plan and such prompt acceptance by substantial majorities of the affected security holders will make its effectuation more simple and speedy even if it should finally become necessary to invoke proceedings under Section 77 of the Bankruptcy Act or otherwise in order to effectuate the Plan as to non-assenting minorities.

If you approve the Plan, you should promptly forward your affected bonds and notes to the appropriate Agent named below, which has been appointed to receive deposits of bonds and notes, at its office in the City of New York. Bonds in coupon form must be accompanied by all coupons maturing after January 1, 1939, and registered bonds must be accompanied by transfer powers in blank. Coupons maturing on or before January 1, 1939, should be detached before forwarding your bonds for deposit, and presented for payment when due in the usual manner.

Bonds deposited must be accompanied by a Letter of Transmittal and Assent to the Plan in the form enclosed, duly signed by the owner of the bonds.

The agent with whom your bonds are deposited will deliver to you a certificate of deposit for your bonds, registered in your name or in such other name as you may designate in your letter of transmittal. No transfer taxes will be payable if the certificate of deposit is issued in the name of the owner of the bond. If the certificate of deposit is to be registered in a name other than that of the present owner of the deposited bonds, appropriate transfer taxes must be paid by you.

If you so request at the time of deposit, you will be reimbursed for all ordinary expenses of forwarding your bonds for deposit, including cost of registration and insurance.

Applications will be made to list on the New York Stock Exchange certificates of deposit issued in respect of securities now listed on that Exchange.

This solicitation of your assent to the Plan and deposit thereunder is being made pursuant to resolutions adopted by the Board of Directors. In the effort to effectuate the Plan, the general work of solicitation, correspondence and records will be conducted by officers of the Company and its own employees. Mr. Gayle W. Arnold, Manager of the Commercial Development Department of the Company, will be in general charge of solicitation, assisted by Mr. Grover O'Neill, an adviser and solicitor whose compensation will be $5,000, plus $2,000 per month during the period of his engagement, and it is anticipated that about ten additional special solicitors may be required, whose compensation is not expected to exceed $500 each per month. The Company expects to assign to the work of solicitation about one hundred employees drawn from the regular forces, whose compensation is not included in the estimate of cost. It is estimated that the total expenses of solicitation, including postage, printing, and mailing, but excluding compensation of regular employees, will not be more than $175,000, but this estimate may be exceeded.

Bondholders who do not assent to the Plan will retain the same legal rights as against the Company (or subsidiary, as the case may be) and its property which they now have unless they shall become bound by the Plan as a result of any legal proceedings which may be invoked under Section 77 of the Bankruptcy Act or otherwise to effectuate the Plan as to non-assenting minorities. If you desire to oppose the Plan, you may so inform the Company by filling out and returning the form of letter herewith enclosed for that purpose.



The amounts of securities of the Company, and the operated subsidiaries dealt with in the Plan, owned directly or indirectly by the officers and directors of the Company and of such operated subsidiaries and by their associates are shown on Schedule A hereto.

Certain financial statements of the Company and of its operated subsidiaries are on file in the offices of the Securities and Exchange Commission and at the office of the New York Stock Exchange. Such financial statements are not included herewith because they are voluminous and consist largely of detailed subdivisions of certain of the accounts shown in Schedules 3 and 4 of the Plan. The Company will, however, be glad to make available copies thereof for examination in its offices at Baltimore, Md., or New York, N. Y., or to answer any inquiries or to supply additional information on request. You may also consult, if you desire, the evidence with regard to the Plan introduced before the Interstate Commerce Commission in Finance Docket Numbers 12,150-3, inclusive.

The Board of Directors urges that, in your own interest, you take prompt action in respect of the Plan. If you desire further information, the Company will be glad to furnish it on request.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
by DANIEL WILLARD, *President*.

AGENTS APPOINTED TO RECEIVE DEPOSITS

| | |
|---|---|
| For The Baltimore and Ohio Railroad Company Pittsburgh, Lake Erie and West Virginia 4% Bonds<br>For The Baltimore and Ohio Railroad Company Refunding and General Mortgage Bonds<br>For Buffalo, Rochester and Pittsburgh Railway Company Consolidated Mortgage Bonds<br>For Lincoln Park and Charlotte Railroad Company First Mortgage 5% Bonds | Central Hanover Bank and Trust Company, 70 Broadway, New York, N. Y. |
| For The Baltimore and Ohio Railroad Company Five-Year 4½% Secured Notes, due August 1, 1939<br>For The Baltimore and Ohio Railroad Company Convertible 4½% Bonds | Kuhn, Loeb & Co., 52 William Street, New York, N. Y. |
| For The Baltimore and Ohio Railroad Company First Mortgage 5% Bonds | United States Trust Company of New York, 45 Wall Street, New York, N. Y. |
| For The Baltimore and Ohio Railroad Company Southwestern Division Bonds | City Bank Farmers Trust Company, 22 William Street, New York, N. Y. |
| For Buffalo and Susquehanna Railroad Corporation First Mortgage Bonds<br>For Cincinnati, Indianapolis and Western Railroad Company First Mortgage Bonds | The Chase National Bank of the City of New York, 11 Broad Street, New York, N. Y. |

SCHEDULE A.—*Statement showing ownership or beneficial interest in securities of the following companies, as of September 15, 1938: The Baltimore and Ohio Railroad Company (B. & O.); Buffalo Rochester and Pittsburgh Railway Company (B. R. & P.); Buffalo and Susquehanna Railroad Corporation (B. & S.) The Cincinnati, Indianapolis and Western Railroad Company (C. I. & W.)*

| Name, office, address | Owned of record or beneficially: (A) by individual, (B) by relative, partnership or corporation or organizations in which respondent owns directly or through beneficial interest, 10% of voting securities | | | |
|---|---|---|---|---|
| | Securities | Owned of record but not beneficially | Owned of record and also beneficially | Owned beneficially but not of record |
| The Baltimore and Ohio R. R. Co.: | | | | |
| (A) Willard, Daniel, president,[1 2 3] Baltimore, Md. | B. & O. Common | None | 1,005 shares | None. |
| | B. R. & P. Common | 1 share | None | None. |
| | B. & S. Preferred | 3 shares | None | None. |
| | C. I. & W. Common | 3 shares | None | None. |
| (B) Mrs. Bertha E. Willard, wife. | B. & O. Ref. & Gen. "F" 5%. | None | $2,500 | None. |
| | B. & O. Ref. & Gen. "A" 5%. | None | $1,000 | None. |
| (B) DeVoe H. Willard, grandson. | B. & O. 1st Mtge. 4% Reg. Bonds. | None | $6,000 | None. |
| | B. & O. Ref. & Gen. "F" 5%. | None | $1,000 | None. |
| (B) Harold N. Willard, grandson. | B. & O. 1st Mtge. 4% Reg. Bonds. | None | $6,000 | None. |
| | B. & O. Ref. & Gen. "C" 6%. | None | $1,000 | None. |
| (A) Bronner, Harry, director, Hotel Plaza, New York City. | B. & O. Common | 105 shares | 100 shares | None. |
| (A) Bruce, Howard, director, Baltimore National Bank, Baltimore, Md. | B. & O. Common | 5 shares | 100 shares | None. |
| (B) Baltimore National Bank, Baltimore, Md. | B. & O. Conv. 4½s '39 | None | None | $25,000. |
| (A) Cornwell, John J., director,[3] Baltimore, Md. | B. & O. Common | 5 shares | None | None. |
| | C. I. & W. Common | 3 shares | None | None. |
| (A) de Gersdorff, Carl A., director, 15 Broad St., N. Y. C. | B. & O. Common | 5 shares | 1 share | None. |
| (A) Garrett, Robert, director, Garrett Building, Baltimore, Md. | B. & O. Common | 5 shares | None | 396 shares. |
| | B. & O. 1st 4s 1948 | None | None | $3,000.[4] |
| | B. & O. P. L. E. & W. Va. 4s '41. | None | None | $10,000.[4] |
| | B. & O. Preferred | None | None | $5,000.[4] |
| | B. & O. Common | None | None | $5,000.[4] |
| (B) Katharine B. Garrett, wife. | B. & O. Equip. Trust '38. | None | None | $2,000.[5] |
| | B. & O. Preferred | None | None | 57 shares.[5] |
| (B) Katharine B. Garrett, daughter. | B. & O. Preferred | None | 1 share | None. |
| (B) Alice W. Garrett, daughter. | B. & O. Preferred | None | 1 share | None. |
| (B) Ella B. J. Garrett, daughter. | B. & O. Preferred | None | 1 share | None. |
| (A) Morron, John R., director, 25 Broadway, New York City. | B. & O. Preferred | None | 2,700 shares | None. |
| | B. & O. Common | None | None | 2,500 shares. |
| | B. & O. Ref. & Gen. Ser. "A" 5% '95. | None | $20,000 | None. |
| (B) Belle G. Morron, wife | B. & O. Ref. & Gen. Ser. "A" 5% '95. | None | $45,000 | None. |
| (B) Carmor Metal Prod. Co. | B. & O. Common | None | None | 525 shares. |
| (A) Shriver, Geo. M., director,[1 2 3] senior vice president, Pikesville, Md. | B. & O. Common | 10 shares | 815 shares | None. |
| | B. & O. Ref. & Gen. "F" '96. | None | $4,000 | None. |
| | B. & O. Conv. '60 | None | $12,000 | None. |
| | B. R. & P. Common | 1 share | None | None. |
| | B. & S. Preferred | 3 shares | None | None. |
| | C. I. & W. Common | 3 shares | None | None. |
| (B) Elizabeth M. Shriver, daughter. | B. & O. Common | None | 26 shares | None. |
| | B. & O. Conv. '60 | None | $1,000 | None. |
| (A) Sprague, Albert A., director, 72 W. Adams St., Chicago, Ill. | B. & O. Preferred | 10 shares | None | None. |
| | B. & O. Common | 15 shares | None | None. |
| (A) Stevens, John F., director, Southern Pines, N. C. | B. & O. Common | 5 shares | None | None. |
| (A) Widener, Jos. E., director, Land Title Bldg., Philadelphia, Pa. | B. & O. Common | 5 shares | None | None. |

See footnotes at end of table.



SCHEDULE A.—*Statement showing ownership or beneficial interest in securities of the following companies, as of September 15, 1938: The Baltimore and Ohio Railroad Company (B. & O.); Buffalo, Rochester and Pittsburgh Railway Company (B. R. & P.); Buffalo and Susquehanna Railroad Corporation (B. & S.); The Cincinnati, Indianapolis and Western Railroad Company (C. I. & W.)*—Con.

| Name, office, address | Owned of record or beneficially: (A) by individual, (B) by relative, partnership or corporation or organizations in which respondent owns directly or through beneficial interest, 10% of voting securities | | | |
|---|---|---|---|---|
| | Securities | Owned of record but not beneficially | Owned of record and also beneficially | Owned beneficially but not of record |
| Baltimore and Ohio officers: | | | | |
| (A) Galloway, Chas. W., vice president,[1 3] Baltimore, Md. | B. & O. Common | None | 960 shares | None. |
| | B. & O. Preferred | None | 100 shares | None. |
| | B. R. & P. Common | 1 share | None | None. |
| | C. I. & W. Common | 3 shares | None | None. |
| | B. & O. 1st Mtge. 4s '48 | None | $2,000 | None. |
| | B. & O. Tol.-Cin. Div. '59. | None | $20,000 | None. |
| | B. & O. Ref. & Gen. 6s '95. | None | $13,000 | None. |
| | B. & O. Conv. 4½s '60 | None | $49,000 | None. |
| | B. R. & P. 4½s '57 | None | $10,000 | None. |
| (B) Margaret B. Galloway, wife. | B. & O. Common | None | 895 shares | None. |
| | B. & O. Tol.-Cin. Div. 4s, '59. | None | $2,000 | None. |
| | B. & O. Ref. & Gen. Mtge. 6s '95. | None | $27,000 | None. |
| | B. & O. Conv. 4½s '60 | None | $4,000 | None. |
| (A) Shumate, Golder, vice president,[1 3] Baltimore, Md. | B. R. & P. Common | 1 share | None | None. |
| | C. I. & W. Common | 3 shares | None | None. |
| (A) Noonan, W. T., vice pres., B. & O., president, B. R. & P., 155 W. Main St., Rochester, N. Y. | B. R. & P. Common | 1 share | None | None. |
| (A) Voorhees, H. B., vice pres. and exec. rep. in Chicago, Chicago, Ill. | ---------- | None | None | None. |
| (A) Ekin, J. J., vice pres. and comptroller, Baltimore, Md. | ---------- | None | None. | None. |
| (A) Murray, James S., vice pres., Baltimore, Md. | ---------- | None | None | None. |
| (A) May, Geo., F., secretary,[3] Baltimore, Md. | C. I. & W. Common | 3 shares | None | None. |
| | B. & O. S. W. Div. 5%. | None | $3,000 | None. |
| (A) Jenkins, J. J., treasurer, Baltimore, Md. | ---------- | None | None | None. |
| Buffalo, Rochester & Pittsburgh Railway Company: | | | | |
| (A) Baird, F. B., director, Buffalo, N. Y. | B. R. & P. Common | 1 share | None | None. |
| (B) Burkett Co., Buffalo, N. Y. | B. & O. Common | None | 57 shares | None. |
| (A) Hamlin, Chauncey J., director, Buffalo, N. Y. | B. & O. Ref. & Gen. "A" 5% '95. | None | None | $10,000. |
| | B. & O. Ref. & Gen. "D" 5% 2000. | None | None | $13,000. |
| (A) Hillman, John H., Jr., director, 1914 Grant Bldg., Pittsburgh, Pa. | B. R. & P. Common | 1 share | None | None. |
| | B. & O. Common | 1,900 shares[6] | None | None. |
| | B. R. & P. Common | 1 share | None | None. |
| (B) Motors Mtge. Corp.[7] | B. & O. Common | None | None | 500 shares.[6] |
| (B) Pioneer Land Co.[7] | B. & O. Common | None | None | 400 shares.[6] |
| | B. & O. Common | None | None | 400 shares. |
| (B) Hecla Coal & Coke Co.[7] | B. & O. Common | None | None | 500 shares. |
| (B) Penn. Industries, Inc.[7] | B. & O. Common | None | None | 1,000 shares.[6] |
| | B. & O. Common | None | None | 500 shares. |
| (A) Kenefick, Daniel J., director, Buffalo, N. Y. | B. R. & P. Common | 1 share | None | None. |
| (A) Miner, Ed. G.,[8] director, Buffalo, N. Y. | | | | |
| (A) Rand, Geo. F., director, c/o Marine Trust Co., Buffalo, N. Y. | B. R. & P. Common | 1 share | None | None. |
| (B) Isabel W. Rand, wife | B. R. & P. 4½s '57 | None | $10,000 | None. |
| | B. & O., P. L. E. & W. Va. 4s '41. | None | $5,000 | None. |
| (A) Rhees, Rush, director, 1063 East Avenue, Rochester, N. Y. | B. R. & P. Common | 1 share | None | None. |
| (A) Woodward, Ernest L., director, Le Roy, N. Y. | B. R. & P. Common | 1 share | None | None. |

See footnotes at end of table.

SCHEDULE A.—*Statement showing ownership or beneficial interest in securities of the following companies, as of September 15, 1938: The Baltimore and Ohio Railroad Company (B. & O.); Buffalo, Rochester and Pittsburgh Railway Company (B. R. & P.); Buffalo and Susquehanna Railroad Corporation (B. & S.); The Cincinnati, Indianapolis and Western Railroad Company (C. I. & W.)*—Con.

| Name, office, address | Owned of record or beneficially: (A) by individual, (B) by relative, partnership or corporation or organizations in which respondent owns directly or through beneficial interest, 10% of voting securities | | | |
|---|---|---|---|---|
| | Securities | Owned of record but not beneficially | Owned of record and also beneficially | Owned beneficially but not of record |
| Buffalo and Susquehanna Railroad Corporation: | | | | |
| (A) Cash, Justin C., director, Baltimore, Md. | B. & S. Preferred | 3 shares | None | None. |
| (A) Clark, F. H., director, 949 Broadway, N. Y. C. | B. & S. Preferred | 3 shares | None | None. |
| (A) Jackson, A. A., director, c/o Girard Trust Co., Philadelphia, Pa. | B. & S. Preferred | None | 3 shares | None. |
| (A) Monk, Chas. T., director, 206 S. 4th St., Philadelphia, Pa. | B. & S. Preferred | 3 shares | None | None. |
| | B. & O. Common | None | 30 shares | None. |
| (A) Scheer, E. W., director, Reading Terminal, Philadelphia, Pa. | B. & S. Preferred | 3 shares | None | None. |
| | B. & O. Common | None | 50 shares | None. |
| | B. & O. Preferred | None | 100 shares | None. |
| (A) Shrader, James F., director, Grays Lane, Haverford, Pa. | B. & S. Preferred | 3 shares | None | None. |
| | B. R. & P. Consol. 4½s '57. | None | $6,000 | None. |
| (A) Yarnell, Chas., director, 1528 Walnut St., Phila., Pa. | B. & S. Preferred | 3 shares | None | None. |
| The Cincinnati, Indianapolis & Western R. R. Co.: | | | | |
| (A) Mitchell, F. B., director, 5 Rural Lane, Cinti., O. | C. & I. W. Common | 3 shares | None | None. |
| (A) Ecker, F. H., director, 1 Madison Ave., N. Y. C. The Metropolitan Life Insurance Company, of which Mr. F. H. Ecker is chairman of the board, as of Sept. 15, 1938, owned securities as follows: | C. I. & W. Common | None | 3 shares | None. |
| Baltimore & Ohio R. R. Co. | First Mtge. 4s '48 | None | $3,173,000 | None. |
| | First Mtge. 5s '48 | None | $4,400,000 | $1,913,000. |
| | Southwestern Div. 5s '50 | None | $1,000,000 | $3,976,000. |
| | P. L. E. & W. Va. 4s '41 | None | $900,000 | $1,105,000. |
| | C. T. & V. First 4s '95 | None | None | $475,000. |
| | C. H. & D. Gen. 5s '42 | None | None | $268,000. |
| | Equip. Trust, Series C, 4½%. | None | None | $450,000. |
| | Equip. Trust, Series D, 4½%. | None | None | $214,000. |
| | Equip. Trust, Series F, 4½%. | None | None | $490,000. |
| | Equip. Trust, Series I, 2½%. | None | None | $6,750,000. |
| | Ref. & Gen. Series A, 5s '95. | None | $1,150,000 | $1,575,000. |
| | Ref. & Gen. Series C, 6s '95. | None | None | $500,000. |
| | Ref. & Gen. Series D, 5s 2000. | None | $210,000 | $2,065,000. |
| | 4% Preferred Stk.—6,900 Shs. | None | $690,000 | None. |
| Buffalo, Roch. & Pitts. Ry. Co. | Consol. 4½s '57 | None | $94,000 | $931,000. |
| Cinti., Indianapolis & West. | 1st 5s '65 | None | None | $551,500. |

[1] Also Director, Buffalo, Rochester and Pittsburgh Railway Company.
[2] Also Director, Buffalo and Susquehanna Railroad Corporation.
[3] Also Director, The Cincinnati, Indianapolis and Western Railroad Company.
[4] As one of the beneficiaries of the estate of Mary F. Jacobs.
[5] As one of the beneficiaries of estate of Dr. Robert W. Johnson.
[6] 1,900 of the shares owned beneficially by the Corporations named are the shares owned off record by Mr. Hillman.
[7] Corporations of which Mr. Hillman owns 10% or more of voting securities.
[8] Abroad, information unavailable.



THE BALTIMORE AND OHIO RAILROAD COMPANY,
*2 Wall Street, New York, N. Y.*

DEAR SIRS: After careful reading and consideration of the Plan of The Baltimore and Ohio Railroad Company for Modification of Interest Charges and Maturities, dated August 15, 1938, and especially of the matters referred to in the "Introductory Statement" thereof, I am constrained to oppose the following provisions of the Plan:

[PLEASE SPECIFY IN DETAIL]

for the following reasons:

[PLEASE SPECIFY IN DETAIL]

I own the following affected Bonds:

| *Issues* | *Principal Amounts* |
|---|---|
| Pittsburgh, Lake Erie and W. Va. 4's of 1941 | |
| B. & O. R. R. Co. Five Year 4½% Secured Notes of 1939 | |
| B. & O. R. R. Co. First Mortgage 5's of 1948 | |
| B. & O. R. R. Co. Southwestern Division 5's of 1950 | |
| B. & O. R. R. Co. Refunding and General Mortgage Bonds: | |
| Series "A" | |
| Series "C" | |
| Series "D" | |
| Series "F" | |
| B. & O. R. R. Co. Convertible 4½'s of 1960 | |
| B., R. & P. Consolidated 4½'s of 1957 | |
| Lincoln Park & Charlotte R. R. Co. First Mortgage 5's of 1939 | |
| B. & S. First Mortgage 4's of 1963 | |
| C., I. & W. First Mortgage 5's of 1965 | |

Yours very truly,

*Name*_____
(Please type or print, giving first or middle name in full)

*Address*_____
(Street and number)

_____
(City) (State)

(To be signed and returned)

THE BALTIMORE AND OHIO RAILROAD COMPANY—ASSENT TO PLAN FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938

_____, 1938.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
*2 Wall Street,*
*New York, N. Y.*

DEAR SIRS: The undersigned hereby acknowledges receipt of a copy of said Plan. The undersigned is the owner of _____ Bonds of The Baltimore and Ohio Railroad Company or its operated subsidiaries (hereinafter called the Bonds) having the serial numbers specified on the back hereof, and, if in coupon form, bearing all appurtenant coupons maturing after January 1, 1939.

The undersigned hereby assents to said Plan in respect of the Bonds and agrees to be bound by the provisions thereof, subject to the right of revocation of this Assent under the conditions provided in said Plan for the withdrawal of deposited bonds.

In consideration of the acceptance of this Assent by The Baltimore and Ohio Railroad Company (hereinafter called the Company) without requiring the deposit of the Bonds under said Plan, the undersigned agrees that, so long as this Assent remains in effect, the undersigned will not sell or otherwise dispose of the Bonds, or any of them, unless the Bonds so disposed of shall have been deposited under said Plan. The undersigned further agrees, upon deposit of any of the Bonds under said Plan, to execute a further assent, in the form prescribed by the Company, to said Plan in respect of the Bonds so deposited. Such further assent, when so executed, shall supersede this Assent as to the Bonds so deposited.

The undersigned further agrees that when the Company is prepared to carry out said Plan, in accordance with the provisions thereof, the undersigned will, upon written request of the Company, if this Assent shall then be in effect, promptly present the Bonds, with all unpaid appurtenant coupons maturing after January 1, 1939, to the Company to be stamped or exchanged in accordance with the Plan.

As provided in said Plan, the undersigned may at any time after December 31, 1938, and before said Plan shall have been declared operative, revoke this Assent. As further provided in said Plan, if said Plan shall be modified or amended, notice of such modification or amendment shall be given as provided in said Plan, and if any such modification or amendment affects the Bonds, the undersigned will be entitled to revoke this Assent within thirty days after the first publication of notice thereof in accordance with said Plan. It is understood and agreed, however, that, if the undersigned does not revoke this Assent within said thirty-day period, the undersigned shall be deemed to have consented to such modification or amendment of said Plan and shall be bound thereby with like effect as if such modification or amendment had been part of said Plan prior to the execution of this Assent.

It is understood that if the Company shall so determine, said Plan may be carried out through proceedings under Section 77 of the Bankruptcy Act or other similar law at the time in force or through such other legal proceedings as the Company may deem appropriate to bind nonassenting security holders. It is agreed that this Assent will be effective as an acceptance of said Plan in any such legal proceedings as fully as if this Assent had been executed after the institution of such proceedings and after the submission therein of a plan to the security holders for their acceptance or rejection, and the undersigned hereby constitutes and appoints the Company his duly authorized attorney and representative to accept the Plan in such proceedings in his behalf, in either case subject to the withdrawal rights permitted by the Plan.

Yours very truly,

---

Name

---

Address

The Assent on the reverse side covers securities affected by the Plan, as follows:

| Securities affected by the plan | Principal amount owned | Serial numbers of bonds |
|---|---|---|
| First Mortgage, 5s '48 | | |
| P. L. E. & W. Va., 4s '41 | | |
| Southwestern Division, 5s '50 | | |
| Five Year Notes, 4½s '39 | | |
| Refunding and General: | | |
| Series "A", 5s '95 | | |
| Series "C", 6s '95 | | |
| Series "D", 5s,2000 | | |
| Series "F", 5s '96 | | |
| Thirty Year Convert., 4½s '60 | | |
| B. R. & P. Ry. Co. Cons., 4½s '57 | | |
| L. P. & C. R. R. Co. 1st, 5s '39 | | |
| B. & S. R. R. Corp. 1st, 4s '63 | | |
| C. I. & W. R. R. Co. 1st, 5s '65 | | |
| Total | | |

(Duplicate—for retention by security holders)

THE BALTIMORE AND OHIO RAILROAD COMPANY—ASSENT TO PLAN FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938

---, 1938.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
*2 Wall Street,*
*New York, N. Y.*

DEAR SIRS: The undersigned hereby acknowledges receipt of a copy of said Plan. The undersigned is the owner of Bonds of The Baltimore and Ohio Railroad Company or its operated subsidiaries (hereinafter called the Bonds) having the serial numbers specified on the back hereof, and, if in coupon form, bearing all appurtenant coupons maturing after January 1, 1939.



The undersigned hereby assents to said Plan in respect of the Bonds and agrees to be bound by the provisions thereof, subject to the right of revocation of this Assent under the conditions provided in said Plan for the withdrawal of deposited bonds.

In consideration of the acceptance of this Assent by The Baltimore and Ohio Railroad Company (hereinafter called the Company) without requiring the deposit of the Bonds under said Plan, the undersigned agrees that, so long as this Assent remains in effect, the undersigned will not sell or otherwise dispose of the Bonds, or any of them, unless the Bonds so disposed of shall have been deposited under said Plan. The undersigned further agrees, upon deposit of any of the Bonds under said Plan, to execute a further assent, in the form prescribed by the Company, to said Plan in respect of the Bonds so deposited. Such further assent, when so executed, shall supersede this Assent as to the Bonds so deposited.

The undersigned further agrees that when the Company is prepared to carry out said Plan, in accordance with the provisions thereof, the undersigned will, upon written request of the Company, if this Assent shall then be in effect, promptly present the Bonds, with all unpaid appurtenant coupons maturing after January 1, 1939, to the Company to be stamped or exchanged in accordance with the Plan.

As provided in said Plan, the undersigned may at any time after December 31, 1938, and before said Plan shall have been declared operative, revoke this Assent. As further provided in said Plan, if said Plan shall be modified or amended, notice of such modification or amendment shall be given as provided in said Plan, and if any such modification or amendment affects the Bonds, the undersigned will be entitled to revoke this Assent within thirty days after the first publication of notice thereof in accordance with said Plan. It is understood and agreed, however, that, if the undersigned does not revoke this Assent within said thirty-day period, the undersigned shall be deemed to have consented to such modification or amendment of said Plan and shall be bound thereby with like effect as if such modification or amendment had been part of said Plan prior to the execution of this Assent.

It is understood that if the Company shall so determine, said Plan may be carried out through proceedings under Section 77 of the Bankruptcy Act or other similar law at the time in force or through such other legal proceedings as the Company may deem appropriate to bind nonassenting security holders. It is agreed that this Assent will be effective as an acceptance of said Plan in any such legal proceedings as fully as if this Assent had been executed after the institution of such proceedings and after the submission therein of a plan to the security holders for their acceptance or rejection, and the undersigned hereby constitutes and appoints the Company his duly authorized attorney and representative to accept the Plan in such proceedings in his behalf, in either case subject to the withdrawal rights permitted by the Plan.

Yours very truly,

---

Name

---

Address

The Assent on the reverse side covers securities affected by the Plan, as follows:

| Securities affected by the plan | Principal amount owned | Serial numbers of bonds |
|---|---|---|
| First Mortgage, 5s '48 | | |
| P. L. E. & W. Va., 4s '41 | | |
| Southwestern Division, 5s '50 | | |
| Five Year Notes, 4½s '39 | | |
| Refunding and General: | | |
| Series "A", 5s '95 | | |
| Series "C", 6s '95 | | |
| Series "D", 5s,2000 | | |
| Series "F", 5s '96 | | |
| Thirty Year Convert., 4½s '60 | | |
| B. R. & P. Ry. Co. Cons., 4½s '57 | | |
| L. P. & C. R. R. Co. 1st, 5s '39 | | |
| B. & S. R. R. Corp. 1st, 4s '63 | | |
| C. I. & W. R. R. Co. 1st, 5s '65 | | |
| Total | | |

THE BALTIMORE AND OHIO RAILROAD COMPANY,
*Baltimore, Md., November 3rd, 1938.*

*To Holders of*

PITTSBURGH, LAKE ERIE AND WEST VIRGINIA 4% BONDS, DUE NOVEMBER 1, 1941
FIVE YEAR 4½% SECURED NOTES, DUE AUGUST 1, 1939
FIRST MORTGAGE 5% BONDS
SOUTHWESTERN DIVISION BONDS
REFUNDING AND GENERAL MORTGAGE BONDS
CONVERTIBLE 4½% BONDS
} OF THE BALTIMORE AND OHIO RAILROAD COMPANY;

CONSOLIDATED MORTGAGE BONDS OF THE BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY COMPANY;

FIRST MORTGAGE 5% BONDS, DUE JANUARY 1, 1939, OF THE LINCOLN PARK AND CHARLOTTE RAILROAD COMPANY;

FIRST MORTGAGE BONDS OF THE BUFFALO AND SUSQUEHANNA RAILROAD CORPORATION;

FIRST MORTGAGE BONDS OF THE CINCINNATI, INDIANAPOLIS AND WESTERN RAILROAD COMPANY.

The Baltimore and Ohio Railroad Company has proposed a Plan for Modification of Interest Charges and Maturities, dated August 15, 1938. A copy of the Plan is enclosed and your attention is invited thereto.

The Plan proposes the extension of certain maturing obligations and the modification of interest charges on certain of the indebtedness of the Company and its operated subsidiaries. The details of the proposed changes are set out in the Plan, to which reference is made.

As more fully set out in the Introductory Statement to the Plan, it is essential, in view of depressed business conditions resulting in reduced earnings, and of increased operating costs, and approaching large maturities, that fixed interest charges be reduced, at least for such time as will provide a reasonable opportunity for reestablishment of earnings and credit, and that suitable provision be made for nearby maturities. The management believes that it is in the interest of security holders and the public to make the necessary modifications of interest charges and maturities by voluntary agreement with the security holders and therefore has proposed the Plan.

The issuance of certificates of deposit and new or modified securities in accordance with the Plan has been authorized by the Interstate Commerce Commission under Section 20a of the Interstate Commerce Act by an order dated November 1, 1938, but theCommission has not yet passed upon the extension of the Notes held by the Reconstruction Finance Corporation or the modification of the agreements with the operated subsidiaries, both of which are subject to its jurisdiction under other provisions of law.

Prompt acceptance of the Plan is essential in order to carry out the Plan and such prompt acceptance by substantial majorities of the affected security holders will make its effectuation more simple and speedy even if it should finally become necessary to invoke proceedings under Section 77 of the Bankruptcy Act or otherwise in order to effectuate the Plan as to non-assenting minorities.

If you approve the Plan, you should promptly forward the enclosed assent, duly executed in respect of your affected bonds, to The Baltimore and Ohio Railroad Company at No. 2 Wall Street, New York, N. Y.

This solicitation of your assent to the Plan and deposit thereunder is being made pursuant to resolutions adopted by the Board of Directors. In the effort to effectuate the Plan, the general work of solicitation, correspondence and records will be conducted by officers of the Company and its own employees. Mr. Gayle W. Arnold, Manager of the Commercial Development Department of the Company, will be in general charge of solicitation, assisted by Mr. Grover O'Neill, an adviser and solicitor, whose compensation will be $5,000, plus $2,000 per month during the period of his engagement, and it is anticipated that about ten additional special solicitors may be required, whose compensation is not expected to exceed $500 each per month. The Company expects to assign to the work of solicitation about one hundred employees drawn from the regular forces, whose compensation is not included in the estimate of cost. It is estimated that the total expenses of solicitation, including postage, printing and mailing, but excluding compensation of regular employees, will not be more than $175,000, but this estimate may be exceeded.

Bondholders who do not assent to the Plan will retain the same legal rights as against the Company (or subsidiary, as the case may be) and its property which they now have unless they shall become bound by the Plan as a result of any legal proceedings which may be invoked under Section 77 of the Bankruptcy Act or otherwise to effectuate the Plan as to non-assenting minorities. If you desire to oppose the Plan, you may so inform the Company by filling out and returning the form of letter herewith enclosed for that purpose.



The amounts of securities of the Company, and the operated subsidiaries dealt with in the Plan, owned directly or indirectly by the officers and directors of the Company and of such operated subsidiaries and by their associates are shown on Schedule A hereto.

Certain financial statements of the Company and of its operated subsidiaries are on file in the offices of the Securities and Exchange Commission and at the office of the New York Stock Exchange. Such financial statements are not included herewith because they are voluminous and consist largely of detailed subdivisions of certain of the accounts shown in Schedules 3 and 4 of the Plan. The Company will, however, be glad to make available copies thereof for examination in its offices at Baltimore, Md., or New York, N. Y., or to answer any inquiries or to supply additional information on request. You may also consult, if you desire, the evidence with regard to the Plan introduced before the Interstate Commerce Commission in Finance Docket Numbers 12,150–3, inclusive.

The Board of Directors urges that, in your own interest, you take prompt action in respect to the Plan. If you desire further information, the Company will be glad to furnish it on request.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By DANIEL WILLARD, *President.*

SCHEDULE A.—*Statement showing ownership or beneficial interest in securities of the following companies, as of September 15, 1938: The Baltimore and Ohio Railroad Company (B. & O.); Buffalo, Rochester and Pittsburgh Railway Company (B. R. & P.); Buffalo and Susquehanna Railroad Corporation (B. & S.) The Cincinnati, Indianapolis and Western Railroad Company (C., I. & W.)*

| Name, office, address | Owned of record or beneficially: (A) by individual, (B) by relative, partnership or corporation or organizations in which respondent owns directly or through beneficial interest, 10% of voting securities | | | |
|---|---|---|---|---|
| | Securities | Owned of record but not beneficially | Owned of record and also beneficially | Owned beneficially but not of record |
| The Baltimore and Ohio R. R. Co.: | | | | |
| (A) Willard, Daniel, president, [1] [2] Baltimore, Md. | B. & O. Common | None | 1,005 shares | None. |
| | B., R. & P. Common | 1 share | None | None. |
| | B. & S. Preferred | 3 shares | None | None. |
| | C., I. & W. Common | 3 shares | None | None. |
| (B) Mrs. Bertha E. Willard, wife. | B. & O. Ref. & Gen. "F" 5%. | None | $2,500 | None. |
| | B. & O. Ref. & Gen. "A" 5%. | None | $1,000 | None. |
| (B) DeVoe H. Willard, grandson. | B. & O. 1st Mtge. 4% Reg. Bonds. | None | $6,000 | None. |
| | B. & O. Ref. & Gen. "F" 5%. | None | $1,000 | None. |
| (B) Harold N. Willard, grandson. | B. & O. 1st Mtge. 4% Reg. Bonds. | None | $6,000 | None. |
| | B. & O. Ref. & Gen. "C" 6%. | None | $1,000 | None. |
| (A) Bronner, Harry, director, Hotel Plaza, New York City. | B. & O. Common | 105 shares | 100 shares | None. |
| (A) Bruce, Howard, director, Baltimore National Bank, Baltimore, Md. | B. & O. Common | 5 shares | 100 shares | None. |
| (B) Baltimore National Bank, Baltimore, Md. | B. & O. Conv. 4½'s '39 | None | None | $25,000. |
| (A) Cornwell, John J., director, [3] Baltimore, Md. | B. & O. Common | 5 shares | None | None. |
| | C., I. & W. Common | 3 shares | None | None. |
| (A) de Gersdorff, Carl A., director, 15 Broad St., N. Y. C. | B. & O. Common | 5 shares | 1 share | None. |

See footnotes at end of table.

SCHEDULE A.—*Statement showing ownership or beneficial interest in securities of the following companies, as of September 15, 1938: The Baltimore and Ohio Railroad Company (B. & O.); Buffalo, Rochester and Pittsburgh Railway Company (B., R. & P.); Buffalo and Susquehanna Railroad Corporation (B. & S.); The Cincinnati, Indianapolis and Western Railroad Company (C., I. & W.)*—Con.

| Name, office, address | Owned of record or beneficially: (A) by individual, (B) by relative, partnership or corporation or organizations in which respondent owns directly or through beneficial interest, 10% of voting securities | | | |
|---|---|---|---|---|
| | Securities | Owned of record but not beneficially | Owned of record and also beneficially | Owned beneficially but not of record |
| The Baltimore and Ohio R. R. Co.—Continued. | | | | |
| (A) Garrett, Robert, director, Garrett Building, Baltimore, Md. | B. & O. Common | 5 shares | None | 396 shares. |
| | B. & O. 1st 4's 1948 | None | None | $3,000.[4] |
| | B. & O. P., L. E. & W. Va. 4's 41. | None | None | $10,000.[4] |
| | B. & O. Preferred | None | Nene | $5,000.[4] |
| | B. & O. Common | None | None | $5,000.[4] |
| (B) Katharine B. Garrett, wife. | B. & O. Equip. Trust '38. | None | None | $2,000.[4] |
| (B) Katharine B. Garrett, daughter. | B. & O. Preferred | None | None | 57 shares.[4] |
| (B) Alice W. Garrett, daughter. | B. & O. Preferred | None | 1 share | None. |
| (B) Ella B. J. Garrett, daughter. | B. & O. Preferred | None | 1 share | None. |
| (A) Morron, John R., director, 25 Broadway, New York City. | B. & O. Preferred | None | 2,700 shares | None. |
| | B. & O. Common | None | None | 2,500 shares. |
| | B. & O. Ref. & Gen. Ser. "A" 5% '95. | None | $20,000 | None. |
| (B) Belle G. Morron, wife | B. & O. Ref. & Gen. Ser. "A" 5% '95. | None | $45,000 | None. |
| (B) Carmor Metal Prod. Co. | B. & O. Common | None | None | 525 shares. |
| (A) Shriver, Geo. M., director,[1 2 3] senior vice president, Pikesville, Md. | B. & O. Common | 10 shares | 815 shares | None. |
| | B. & O. Ref. & Gen. "F" '96. | None | $4,000 | None. |
| | B. & O. Conv. '60 | None | $12,000 | None. |
| | B., R. & P. Common | 1 share | None | None. |
| | B. & S. Preferred | 3 shares | None | None. |
| | C., I. & W. Common | 3 shares | None | None. |
| (B) Elizabeth M. Shriver, daughter. | B. & O. Common | None | 26 shares | None. |
| | B. & O. Conv. '60 | None | $1,000 | None. |
| (A) Sprague, Albert A., director, 72 W. Adams St., Chicago, Ill. | B. & O. Preferred | 10 shares | None | None. |
| | B. & O. Common | 15 shares | None | None. |
| (A) Stevens, John F., director, Southern Pines, N. C. | B. & O. Common | 5 shares | None | None. |
| (A) Widener, Jos. E., director, Land Title Bldg., Philadelphia, Pa. | B. & O. Common | 5 shares | None | None. |
| Baltimore and Ohio officers: | | | | |
| (A) Galloway, Chas. W., vice president,[1 3] Baltimore, Md. | B. & O. Common | None | 960 shares | None. |
| | B. & O. Preferred | None | 100 shares | None. |
| | B., R. & P. Common | 1 share | None | None. |
| | C., I. & W. Common | 3 shares | None | None. |
| | B. & O. 1st Mtge. 4's '48 | None | $2,000 | None. |
| | B. & O. Tol.-Cin. Div. 4's '59. | None | $20,000 | None. |
| | B. & O. Ref. & Gen. 6's '95. | None | $13,000 | None. |
| | B. & O. Conv. 4½'s '60 | None | $49,000 | None. |
| | B., R. & P. 4½'s '57 | None | $10,000 | None. |
| (B) Margaret B. Galloway, wife. | B. & O. Common | None | 805 shares | None. |
| | B. & O., Tol.-Cin. Div. 4's, '59. | None | $2,000 | None. |
| | B. & O. Ref. & Gen. Mtge. 6's '95. | None | $27,000 | None. |
| | B. & O. Conv. 4½'s '60 | None | $4,000 | None. |
| | B., R. & P. Common | 1 share | None | None. |
| (A) Shumate, Golder, vice president,[1 2] Baltimore, Md. | C., I. & W. Common | 3 shares | None | None. |
| (A) Noonan, W. T., vice pres., B. & O., president, B., R. & P., 155 W. Main St., Rochester, N. Y. | B., R. & P. Common | 1 share | None | None. |
| (A) Voorhees, H. B., vice pres. and exec. rep. in Chicago, Chicago, Ill. | ---------- | None | None | None. |

**See footnotes at end of table.**



SCHEDULE A.—*Statement showing ownership or beneficial interest in securities of the following companies, as of September 15, 1938: The Baltimore and Ohio Railroad Company (B. & O.); Buffalo, Rochester and Pittsburgh Railway Company (B., R. & P.); Buffalo and Susquehanna Railroad Corporation (B. & S.); The Cincinnati, Indianapolis and Western Railroad Company (C., I. & W.)*—Con.

| Name, office, address | Owned of record or beneficially: (A) by individual, (B) by relative, partnership or corporation or organizations in which respondent owns directly or through beneficial interest, 10% of voting securities | | | |
|---|---|---|---|---|
| | Securities | Owned of record but not beneficially | Owned of record and also beneficially | Owned beneficially but not of record |
| Baltimore and Ohio officers—Con. | | | | |
| (A) Ekin, J. J., vice pres. and comptroller, Baltimore, Md. | ---------- | None | None | None. |
| (A) Murray, James S., vice pres., Baltimore, Md. | ---------- | None | None | None. |
| (A) May, Geo., F., secretary,[3] Baltimore, Md. | C., I. & W. Common | 3 shares | None | None. |
| | B. & O. S. W. Div. 5%- | None | $3,000 | None. |
| (A) Jenkins, J. J., treasurer, Baltimore, Md. | ---------- | None | None | None. |
| Buffalo, Rochester & Pittsburgh Railway Company: | | | | |
| (A) Baird, F. B., director, Buffalo, N. Y. | B., R. & P. Common | 1 share | None | None. |
| (B) Burkett Co., Buffalo, N. Y. | B. & O. Common | None | 57 shares | None. |
| (A) Hamlin, Chauncey J., director, Buffalo, N. Y. | B. & O. Ref. & Gen. "A" 5% '95. | None | None | $10,000. |
| | B. & O. Ref. & Gen. "D" 5% 2000. | None | None | $13,000. |
| | B., R. & P. Common | 1 share | None | None. |
| (A) Hillman, John H. Jr., director, 1914 Grant Bldg., Pittsburgh, Pa. | B. & O. Common | 1,900 shares[6] | None | None. |
| | B., R. & P. Common | 1 share | None | None. |
| (B) Motors Mtgs. Corp.[7] | B. & O. Common | None | None | 500 shares.[6] |
| (B) Pioneer Land Co.[7] | B. & O. Common | None | None | 400 shares.[6] |
| (B) Hecla Coal & Coke Co.[7] | B. & O. Common | None | None | 400 shares. |
| (B) Penn. Industries, Inc.[7] | B. & O. Common | None | None | 500 shares. |
| | B. & O. Common | None | None | 1,000 shares.[6] |
| (A) Kenefick, Daniel J., director, Buffalo, N. Y. | B., R. & P. Common | 1 share | None | 500 shares. |
| (A) Miner, Ed. G.,[5] director, Buffalo, N. Y. | ---------- | ---------- | ---------- | None. |
| (A) Rand, Geo. F., director, c/o Marine Trust Co., Buffalo, N. Y. | B., R. & P. Common | 1 share | None | None. |
| (B) Isabel W. Rand, wife | B., R. & P. 4½'s '57 | None | $10,000 | None. |
| | B. & O., P., L. E. & W. Va. 4's '41. | None | 5,000 | None. |
| (A) Rhees, Rush, director, 1063 East Avenue, Rochester, N. Y. | B., R. & P. Common | 1 share | None | None. |
| (A) Woodward, Ernest L., director, Le Roy, N. Y. | B., R. & P. Common | 1 share | None | None. |
| Buffalo and Susquehanna Railroad Corporation: | | | | |
| (A) Cash, Justin C., director, Baltimore, Md. | B. & S. Preferred | 3 shares | None | None. |
| (A) Clark, F. H., director, 949 Broadway, N. Y. C. | B. & S. Preferred | 3 shares | None | None. |
| (A) Jackson, A. A., director, c/o Girard Trust Co., Philadelphia, Pa. | B. & S. Preferred | None | 3 shares | None. |
| (A) Monk, Chas. T., director, 206 S. 4th St., Philadelphia, Pa. | B. & S. Preferred | 3 shares | None | None. |
| | B. & O. Common | None | 30 shares | None. |
| (A) Scheer, E. W., director, Reading Terminal, Philadelphia, Pa. | B. & S. Preferred | 3 shares | None | None. |
| | B. & O. Common | None | 50 shares | None. |
| | B. & O. Preferred | None | 100 shares | None. |
| (A) Shrader, James F., director, Grays Lane, Haverford, Pa. | B. & S. Preferred | 3 shares | None | None. |
| | B., R. & P. Consol. 4½'s '57. | None | $6,000 | None. |
| (A) Yarnall, Chas., director, 1528 Walnut St., Phila., Pa. | B. & S. Preferred | 3 shares | None | None. |

**See footnotes at end of table.**

SCHEDULE A.—*Statement showing ownership or beneficial interest in securities of the following companies, as of September 15, 1938: The Baltimore and Ohio Railroad Company (B. & O.); Buffalo, Rochester and Pittsburgh Railway Company (B., R. & P.); Buffalo and Susquehanna Railroad Corporation (B. & S.); The Cincinnati, Indianapolis and Western Railroad Company (C., I. & W.)*—Con.

| Name, office, address | Owned of record or beneficially: (A) by individual, (B) by relative, partnership or corporation or organizations in which respondent owns directly or through beneficial interest, 10N of voting securities | | | |
|---|---|---|---|---|
| | Securities | Owned of record but not beneficially | Owned of record and also beneficially | Owned beneficially but not of record |
| The Cincinnati, Indianapolis & Western R. R. Co.: | | | | |
| (A) Mitchell, F. B., director, 5 Rural Lane, Cinti., O. | C. & I. W. Common | 3 shares | None | None. |
| (A) Ecker, F. H., director, 1 Madison Ave., N. Y. C. The Metropolitan Life Insurance Company, of which Mr. F. H. Ecker is chairman of the board, as of Sept. 15, 1938, owned securities as follows: | C., I. & W. Common | None | 3 shares | None. |
| Baltimore & Ohio R. R. Co. | First Mtge. 4's '48 | None | $3,173,000 | None. |
| | First Mtge. 5's '48 | None | $4,400,000 | $1,913,000. |
| | Southwestern Div. 5's '50 | None | $1,000,000 | $3,976,000. |
| | P., L. E. & W. Va. 4's '41 | None | $900,000 | $1,105,000. |
| | C., T. & V. First 4's '95 | None | None | $475,000. |
| | C., H. & D. Gen. 5's '42 | None | None | $268,000. |
| | Equip. Trust, Series C, 4½%. | None | None | $450,000. |
| | Equip. Trust, Series D, 4½%. | None | None | $214,000. |
| | Equip. Trust, Series F, 4½%. | None | None | $490,000. |
| | Equip. Trust, Series I, 2½%. | None | None | $6,750,000. |
| | Ref. & Gen. Series A, 5's '95. | None | $1,150,000 | $1,575,000. |
| | Ref. & Gen. Series C, 6's '95. | None | None | $500,000. |
| | Ref. & Gen. Series D, 5's 2000. | None | $210,000 | $2,065,000. |
| | 4% Preferred Stk. 6,900 Shs. | None | $690,000 | None. |
| Buffalo, Roch. & Pitts. Ry. Co. | Consol. 4½'s '57 | None | $94,000 | $931,000. |
| Cinti., Indianapolis & West. | 1st 5's '65 | None | None | $551,500. |

[1] Also Director, Buffalo, Rochester and Pittsburgh Railway Company.
[2] Also Director, Buffalo and Susquehanna Railroad Corporation.
[3] Also Director, The Cincinnati, Indianapolis and Western Railroad Company.
[4] As one of the beneficiaries of the Estate of Mary F. Jacobs.
[5] As one of the beneficiaries of Estate of Dr. Robert W. Johnson.
[6] 1,900 of the shares owned beneficially by the Corporations named are the shares owned of record by Mr. Hillman.
[7] Corporations of which Mr. Hillman owns 10% or more of voting securities.
[8] Abroad, information unavailable.



(To be signed and returned)

THE BALTIMORE AND OHIO RAILROAD COMPANY—ASSENT TO PLAN FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938.

----------, 1938.

The BALTIMORE AND OHIO RAILROAD COMPANY,
Care of
(Here insert name of bank which is to hold Bonds)
----------, ---------

Dear Sirs:

The undersigned hereby acknowledges receipt of a copy of said Plan. The undersigned is the owner of Bonds of The Baltimore and Ohio Railroad Company or its operated subsidiaries (hereinafter called the Bonds) having the serial numbers specified on the back hereof, and, if in coupon form, bearing all appurtenant coupons maturing after January 1, 1939.

The undersigned hereby assents to said Plan in respect of the Bonds and agrees to be bound by the provisions thereof, subject to the right of revocation of this Assent under the conditions provided in said Plan for the withdrawal of deposited bonds.

In consideration of the acceptance of this Assent by The Baltimore and Ohio Railroad Company (hereinafter called the Company) without requiring the deposit of the Bonds under said Plan, the undersigned agrees that, so long as this Assent remains in effect, the undersigned will not sell or otherwise dispose of the Bonds, or any of them, unless the Bonds so disposed of shall have been deposited under said Plan. The undersigned further agrees, upon deposit of any of the Bonds under said Plan, to execute a further assent, in the form prescribed by the Company, to said Plan in respect of the Bonds so deposited. Such further assent, when so executed, shall supersede this Assent as to the Bonds so deposited.

The undersigned further agrees that when the Company is prepared to carry out said Plan, in accordance with the provisions thereof, the Bonds, with all unpaid appurtenant coupons, will, if this Assent shall then be in effect, be promptly presented to the Company to be stamped or exchanged in accordance with the Plan.

As provided in said Plan, the undersigned may at any time after December 31, 1938, and before said Plan shall have been declared operative, revoke this Assent. As further provided in said Plan, if said Plan shall be modified or amended, notice of such modification or amendment shall be given as provided in said Plan, and if any such modification or amendment affects the Bonds, the undersigned will be entitled to revoke this Assent within thirty days after the first publication of notice thereof in accordance with said Plan. It is understood and agreed, however, that, if the undersigned does not revoke this Assent within said thirty-day period, the undersigned shall be deemed to have consented to such modification or amendment of said Plan and shall be bound thereby with like effect as if such modification or amendment had been part of said Plan prior to the execution of this Assent.

It is understood that if the Company shall so determine, said Plan may be carried out through proceedings under Section 77 of the Bankruptcy Act or other similar law at the time in force or through such other legal proceedings as the Company may deem appropriate to bind nonassenting security holders. It is agreed that this assent will be effective as an acceptance of said Plan in any such legal proceedings as fully as if this assent had been executed after the institution of such proceedings and after the submission therein of a plan to the security holders for their acceptance or rejection, and the undersigned hereby constitutes and appoints the Company his duly authorized attorney and representative to accept the Plan in such proceedings in his behalf, in either case subject to the withdrawal rights permitted by the Plan.

The Bonds are { herewith delivered to / in the custody of } said Bank, which is hereby authorized and directed (a) to hold the Bonds for account of the undersigned, but subject in all respects to the agreements of the undersigned herein contained and (b) to present the Bonds for stamping, as above provided, upon notice that the Company is prepared to carry out the Plan.

Yours very truly,

---
Name

---
Address

The assent on the reverse side covers securities affected by the Plan, as follows:

| Securities affected by the plan | Principal amount owned | Serial numbers of bonds |
|---|---|---|
| First Mortgage, 5s '48 | | |
| P. L. E. & W. Va., 4s '41 | | |
| Southwestern Division, 5s '50 | | |
| Five Year Notes, 4½s '39 | | |
| Refunding and General: | | |
| Series "A", 5s '95 | | |
| Series "C", 6s '95 | | |
| Series "D", 5s 2000 | | |
| Series "F", 5s '96 | | |
| Thirty Year Convert., 4½s '60 | | |
| B. R. & P. Ry. Co. Cons., 4½s '57 | | |
| L. P. & C. R. R. Co. 1st, 5s '39 | | |
| B. & S. R. R. Corp. 1st, 4s '63 | | |
| C. I. & W. R. R. Co. 1st, 5s '65 | | |
| Total | | |

Received of _____ _____,
(Name of owner) (Address)

the securities listed above to be held for the account of the owner and subject to the agreement and the purposes set forth on the reverse side hereof.

_____
(Custodian Bank)

By _____

(Duplicate—for retention by security holders)

THE BALTIMORE AND OHIO RAILROAD COMPANY—ASSENT TO PLAN FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938

_____, 1938.

The BALTIMORE AND OHIO RAILROAD COMPANY,
Care of
(Here insert name of bank which is to hold Bonds)
_____, _____

Dear Sirs:

The undersigned hereby acknowledges receipt of a copy of said Plan. The undersigned is the owner of Bonds of The Baltimore and Ohio Railroad Company or its operated subsidiaries (hereinafter called the Bonds) having the serial numbers specified on the back hereof, and, if in coupon form, bearing all appurtenant coupons maturing after January 1, 1939.

The undersigned hereby assents to said Plan in respect of the Bonds and agrees to be bound by the provisions thereof, subject to the right of revocation of this Assent under the conditions provided in said Plan for the withdrawal of deposited bonds.

In consideration of the acceptance of this Assent by The Baltimore and Ohio Railroad Company (hereinafter called the Company) without requiring the deposit of the Bonds under said Plan, the undersigned agrees that, so long as this Assent remains in effect, the undersigned will not sell or otherwise dispose of the Bonds, or any of them, unless the Bonds so disposed of shall have been deposited under said Plan. The undersigned further agrees, upon deposit of any of the Bonds under said Plan, to execute a further assent, in the form prescribed by the Company, to said Plan in respect of the Bonds so deposited. Such further assent, when so executed, shall supersede this Assent as to the Bonds so deposited.

The undersigned further agrees that when the Company is prepared to carry out said Plan, in accordance with the provisions thereof, the Bonds, with all unpaid appurtenant coupons, will, if this Assent shall then be in effect, be promptly presented to the Company to be stamped or exchanged in accordance with the Plan.



As provided in said Plan, the undersigned may at any time after December 31, 1938, and before said Plan shall have been declared operative, revoke this Assent. As further provided in said Plan, if said Plan shall be modified or amended, notice of such modification or amendment shall be given as provided in said Plan, and if any such modification or amendment affects the Bonds, the undersigned will be entitled to revoke this Assent within thirty days after the first publication of notice thereof in accordance with said Plan. It is understood and agreed, however, that, if the undersigned does not revoke this Assent within said thirty-day period, the undersigned shall be deemed to have consented to such modification or amendment of said Plan and shall be bound thereby with like effect as if such modification or amendment had been part of said Plan prior to the execution of this Assent.

It is understood that if the Company shall so determine, said Plan may be carried out through proceedings under Section 77 of the Bankruptcy Act or other similar law at the time in force or through such other legal proceedings as the Company may deem appropriate to bind nonassenting security holders. It is agreed that this assent will be effective as an acceptance of said Plan in any such legal proceedings as fully as if this assent had been executed after the institution of such proceedings and after the submission therein of a plan to the security holders for their acceptance or rejection, and the undersigned hereby constitutes and appoints the Company his duly authorized attorney and representative to accept the Plan in such proceedings in his behalf, in either case subject to the withdrawal rights permitted by the Plan.

The Bonds are {herewith delivered to / in the custody of} said Bank, which is hereby authorized and directed (a) to hold the Bonds for account of the undersigned, but subject in all respects to the agreements of the undersigned herein contained and (b) to present the Bonds for stamping, as above provided, upon notice that the Company is prepared to carry out the Plan.

Yours very truly,

_____
Name

_____
Address

The assent on the reverse side covers securities affected by the Plan, as follows:

| Securities affected by the Plan | Principal amount owned | Serial numbers of Bonds |
|---|---|---|
| First Mortgage, 5s '48 | | |
| P. L. E. & W. Va., 4s '41 | | |
| Southwestern Division, 5s '50 | | |
| Five Year Notes, 4½s '39 | | |
| Refunding and General: | | |
| Series "A", 5s '95 | | |
| Series "C", 6s '95 | | |
| Series "D", 5s 2000 | | |
| Series "F", 5s '96 | | |
| Thirty Year Convert., 4½s '60 | | |
| B. R. & P. Ry. Co. Cons., 4½s '57 | | |
| L. P. & C. R. R. Co. 1st, 5s '39 | | |
| B. & S. R. R. Corp. 1st, 4s '63 | | |
| C. I. & W. R. R. Co. 1st, 5s '65 | | |
| Total | | |

Received of _____ _____,
(Name of owner) (Address)

the securities listed above to be held for the account of the owner and subject to the agreement and the purposes set forth on the reverse side hereof.

_____
(Custodian Bank)

by _____

(Triplicate—for retention by custodian)

THE BALTIMORE AND OHIO RAILROAD COMPANY—ASSENT TO PLAN FOR MODIFICATION OF INTEREST CHARGES AND MATURITIES, DATED AUGUST 15, 1938.

----------, 1938.

The BALTIMORE AND OHIO RAILROAD COMPANY,
Care of
(Here insert name of bank which is to hold Bonds)
----------, ---------

Dear Sirs:

The undersigned hereby acknowledges receipt of a copy of said Plan. The undersigned is the owner of Bonds of The Baltimore and Ohio Railroad Company or its operated subsidiaries (hereinafter called the Bonds) having the serial numbers specified on the back hereof, and, if in coupon form, bearing all appurtenant coupons maturing after January 1, 1939.

The undersigned hereby assents to said Plan in respect of the Bonds and agrees to be bound by the provisions thereof, subject to the right of revocation of this Assent under the conditions provided in said Plan for the withdrawal of deposited bonds.

In consideration of the acceptance of this Assent by The Baltimore and Ohio Railroad Company (hereinafter called the Company) without requiring the deposit of the Bonds under said Plan, the undersigned agrees that, so long as this Assent remains in effect, the undersigned will not sell or otherwise dispose of the Bonds, or any of them, unless the Bonds so disposed of shall have been deposited under said Plan. The undersigned further agrees, upon deposit of any of the Bonds under said Plan, to execute a further assent, in the form prescribed by the Company, to said Plan in respect of the Bonds so deposited. Such further assent, when so executed, shall supersede this Assent as to the Bonds so deposited.

The undersigned further agrees that when the Company is prepared to carry out said Plan, in accordance with the provisions thereof, the Bonds, with all unpaid appurtenant coupons, will, if this Assent shall then be in effect, be promptly presented to the Company to be stamped or exchanged in accordance with the Plan.

As provided in said Plan, the undersigned may at any time after December 31, 1938, and before said Plan shall have been declared operative, revoke this Assent. As further provided in said Plan, if said Plan shall be modified or amended, notice of such modification or amendment shall be given as provided in said Plan, and if any such modification or amendment affects the Bonds, the undersigned will be entitled to revoke this Assent within thirty days after the first publication of notice thereof in accordance with said Plan. It is understood and agreed, however, that, if the undersigned does not revoke this Assent within said thirty-day period, the undersigned shall be deemed to have consented to such modification or amendment of said Plan and shall be bound thereby with like effect as if such modification or amendment had been part of said Plan prior to the execution of this Assent.

It is understood that if the Company shall so determine, said Plan may be carried out through proceedings under Section 77 of the Bankruptcy Act or other similar law at the time in force or through such other legal proceedings as the Company may deem appropriate to bind nonassenting security holders. It is agreed that this assent will be effective as an acceptance of said Plan in any such legal proceedings as fully as if this assent had been executed after the institution of such proceedings and after the submission therein of a plan to the security holders for their acceptance or rejection, and the undersigned hereby constitutes and appoints the Company his duly authorized attorney and representative to accept the Plan in such proceedings in his behalf, in either case subject to the withdrawal rights permitted by the Plan.

The Bonds are {herewith delivered to / in the custody of} said Bank, which is hereby authorized and directed (a) to hold the Bonds for account of the undersigned, but subject in all respects to the agreements of the undersigned herein contained and (b) to present the Bonds for stamping, as above provided, upon notice that the Company is prepared to carry out the Plan.

Yours very truly,

---
Name

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Address



The assent on the reverse side covers securities affected by the Plan, as follows:

| Securities Affected by the Plan | Principal Amount Owned | Serial Numbers of Bonds |
|---|---|---|
| First Mortgage, 5s '48 | | |
| P. L. E. & W. Va., 4s '41 | | |
| Southwestern Division, 5s '50 | | |
| Five-Year Notes, 4½s '39 | | |
| Refunding and General: | | |
| Series "A", 5s '95 | | |
| Series "C" 6s '95 | | |
| Series "D", 5s 2000 | | |
| Series "F", 5s '96 | | |
| Thirty-Year Convert., 4½s '60 | | |
| B. R. & P. Ry. Co. Cons., 4½s '57 | | |
| L. P. & C. R. R. Co. 1st, 5s '39 | | |
| B. & S. R. R. Corp. 1st, 4s '63 | | |
| C. I. & W. R. R. Co. 1st, 5s '65 | | |
| Total | | |

Received of ---------- ----------,
(Name of Owner) (Address)
the securities listed above to be held for the account of the owner and subject to the agreement and the purposes set forth on the reverse side hereof.

----------,
(Custodian Bank)
by ----------

Mr. ANDERSON. I say that we entirely sympathize with Mr. Eastman's views. The Commission should pass on the plan first, and we followed that course. I should like to offer the report of the Commission.

(The report of the Interstate Commerce Commission on the Baltimore & Ohio Railroad Co. financial readjustment is as follows:)

F-7347

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 12150 [1]

BALTIMORE & OHIO RAILROAD COMPANY FINANCIAL READJUSTMENT

*Submitted October 25, 1938. Decided November 1, 1938*

Authority granted, pursuant to a proposed plan for modification of interest charges and maturities, dated August 15, 1938:

1. To the Baltimore & Ohio Railroad Company (*a*) to issue not exceeding $64,410,400 of Pittsburgh, Lake Erie & West Virginia system refunding 4-percent mortgage bonds, $50,000,000 of secured notes, $75,000,000 of first-mortgage 5-percent bonds, $45,000,000 of Southwestern division first-mortgage 5-percent bonds, $260,272,000 of refunding and general mortgage bonds, and $63,031,000 of 30-year 4½-percent convertible bonds, in each case in respect of an equal principal amount of existing bonds or notes, or to modify said existing bonds and notes as to maturities and interest in the manner provided by the plan, and not exceeding $434,333,750 of certificates of deposit in respect of an equal principal amount of existing bonds and notes, (*b*) to assume obligation and liability in respect of interest or dividends on not exceeding $34,297,000 of consolidated-mortgage 4½-percent bonds of the Buffalo, Rochester & Pittsburgh Railway Company, $350,000 of first-mortgage 5-percent 50-year bonds of the Lincoln Park & Charlotte Railroad Company, $2,000,000 of first-mortgage 4-percent bonds and $3,200,000 of guaranteed 6-percent stock of the Allegheny & Western Railway Company, $650,000 of first-mortgage 5-percent bonds and $900,000 of guaranteed 6-percent stock of the Clearfield & Mahoning

[1] This report also embraces Finance Dockets No. 12151, Buffalo, Rochester & Pittsburgh Railway Company Financial Readjustment; No. 12152, Cincinnati, Indianapolis & Western Railroad Company Financial Readjustment; and No. 12153, Buffalo & Susquehanna Railroad Corporation Financial Readjustment.

Railway Company, $2,824,800 of first-mortgage 4-percent bonds of the Buffalo & Susquehanna Railroad Corporation, and $4,675,000 of first-mortgage 5-percent 50-year bonds of the Cincinnati, Indianapolis & Western Railroad Company, and (c) to issue not exceeding $270,779,700 of common capital stock, consisting of 2,707,797 shares of the par value of $100 each, for the purpose of converting into common capital stock such refunding and general mortgage bonds and 30-year convertible 4½-percent bonds as may be presented for that purpose.

2. To the Buffalo, Rochester & Pittsburgh Railway Company to issue not exceeding $34,297,000 of consolidated-mortgage 4½-percent bonds and $350,000 of Lincoln Park & Charlotte Railroad Company first-mortgage 5-percent 50-year bonds, in each case in respect of an equal principal amount of existing bonds, or to modify the existing bonds as to interest and maturity pursuant to the plan, and not exceeding $29,464,000 of certificates of deposit in respect of an equal principal amount of existing bonds.
3. To the Cincinnati, Indianapolis & Western Railroad Company to issue not exceeding $4,675,000 of first-mortgage 5-percent 50-year bonds in respect of an equal principal amount of existing bonds, or to modify the existing bonds as to interest pursuant to the plan, and not exceeding $4,675,000 of certificates of deposit in respect of an equal principal amount of first-mortgage 5-percent 50-year bonds.
4. To the Buffalo & Susquehanna Railroad Corporation to issue not exceeding $2,824,800 of first-mortgage 4-percent gold bonds in respect of an equal principal amount of existing bonds, or to modify the existing bonds as to interest on such bonds in sinking funds, as provided in the plan and not exceeding $2,824,800 of certificates of deposit in respect of an equal principal amount of first-mortgage 4-percent bonds.
5. That part of the Baltimore & Ohio Railroad Company application requesting authority to issue notes to the Reconstruction Finance Corporation, dismissed.

*Henry W. Anderson, Carl A. deGersdorff, Leonard D. Adkins, George D. Gibson,* and *R. Marsden Smith* for applicants

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, PORTER, AND MAHAFFIE

By Division 4:

The Baltimore and Ohio Railroad Company and three of its subsidiaries, the Buffalo, Rochester and Pittsburgh Railway Company, The Cincinnati, Indianapolis & Western Railroad Company, and the Buffalo & Susquehanna Railroad Corporation, referred to hereinafter as the Baltimore & Ohio, the Buffalo, the Cincinnati, and the Susquehanna, respectively, filed separate applications on September 2, 1938, requesting authority for the Baltimore & Ohio, pursuant to its proposed plan for modification of interset charges and maturities, dated August 15, 1938, (1) to issue certificates of deposit, in respect of certain of its securities aggregating $434,333,750, and to issue not exceeding $64,410,400 of Pittsburgh, Lake Erie & West Virginia system refunding-mortgage 4-percent bonds, $50,000,000 of secured notes, $72,771,578 of notes to the Reconstruction Finance Corporation, referred to hereinafter as the Finance Corporation, $75,000,000 of first-mortgage 5-percent bonds, $45,000,000 of Southwestern division first-mortgage 5-percent bonds, $260,272,000 of refunding and general mortgage bonds, and $63,031,000 of 30-year 4½-percent convertible bonds, in each case for an equal principal amount of existing bonds or notes, (2) to assume obligation and liability in respect of interest or dividends on securities of the Buffalo and its subsidiaries aggregating $37,297,000, on $2,824,800 of first-mortgage 4-percent bonds of the Susquehanna, and on $4,675,000 of first-mortgage 5-percent 50-year bonds of the Cincinnati, and (3) to issue not exceeding $270,779,700 of common capital stock, consisting of 2,707,797 shares of the par value of $100 a share, at such times as may be necessary to comply with the conversion rights given by the plan to the holders of the Baltimore & Ohio refunding and general mortgage bonds and convertible 4½-percent bonds. Of the subsidiaries, the Buffalo requests authority, also in accordance with the plan, (1) to issue certificates of deposit in respect of $29,114,000 of consolidated-mortgage 4½-percent bonds and $350,000 of first-mortgage 5-percent 50-year bonds of the Lincoln Park & Charlotte Railroad Company assumed by that company, and (2) to issue consolidated-mortgage bonds up to a principal amount of $34,297,000 for outstanding consolidated-mortgage 4½-percent bonds, and first-mortgage 5-percent 50-year bonds



up to a principal amount of $350,000 for Lincoln Park & Charlotte Railroad Company first-mortgage 5-percent 50-year bonds. The Cincinnati, also in accordance with the plan, requests authority (1) to issue certificates of deposit in respect of first-mortgage 5-percent 50-year bonds up to a principal amount of $4,675,000, and (2) to issue not exceeding $4,675,000 of first-mortgage 5-percent 50-year bonds for outstanding first-mortgage 5-percent 50-year bonds. The Susquehanna requests authority, pursuant to the plan, (1) to issue certificates of deposit in respect of first-mortgage 4-percent bonds up to a principal amount of $2,824,800, and (2) to issue, for outstanding first-morgtage 4-percent gold bonds, not exceeding $2,824,800 of first-mortgage 4-percent bonds. A hearing was held on these applications at Washington on September 22, 1938. No formal objections to the applications have been offered.

Our orders of April 27, 1926, in *Cincinnati, I. & W. R. Co. Control,* 111 I. C. C. 124, of February 11, 1930, in *Buffalo, R. & P. Ry. Co. Control,* 158 I. C. C. 779, and of May 16, 1930, in *Buffalo & S. R. Corp. Control,* 162 I. C. C. 656, authorized the acquisition of control of these companies by the purchase of their respective capital stocks by the Baltimore & Ohio. Our order of April 28, 1927, in *Cincinnati, I. & W. R. Co. Control,* 124 I. C. C. 476, authorized the Baltimore & Ohio to acquire control of the Cincinnati under an operating agreement, and our order of November 19, 1931, in *Buffalo, R. & P. Ry. Co. Control,* 180 I. C. C. 14, authorized the Baltimore & Ohio to acquire control of the lines of railroad of the Buffalo and the Susquehanna under operating agreements.

In presenting its plan of financial readjustment, the Baltimore & Ohio made an introductory statement setting forth the reasons leading up to its development, as well as the beneficial results expected to be derived from its adoption. Briefly summarized, the reasons given for the development of the plan are that the current recession in business reacted adversely on the Baltimore & Ohio's gross operating revenues, and the decline in revenues was aggravated because of increases in operating costs, such as increases in wages and costs of fuel, material, and supplies, as well as considerable increases in taxation. As a result of this decline in revenues and increase in operating costs, the earnings available for interest for the first six months in 1938 were approximately $12,000,000 less than fixed charges for that period, and the deficit for the current year is estimated at more than $14,000,000. It is represented that subsequently to 1931 the Baltimore & Ohio had to meet maturities of its funded debt aggregating $172,585,700, and, as most of these maturities occurred at times when the securities markets were so depressed as to make payment or refunding by ordinary means impossible, it became necessary to borrow substantial amounts from the Finance Corporation. The present indebtedness of the Baltimore & Ohio to that corporation, excluding $13,490,000, of the 4½-percent secured notes of 1939, and $1,424,000 of equipment obligations, amounts to $72,771,578, over 80 percent of which was incurred to provide for such maturities.

In spite of the adverse conditions set forth, the Baltimore & Ohio has heretofore met its maturing obligations and interest charges, and, it is stated, its properties have been maintained in a safe condition. However, it asserts that it cannot continue to do so if the conditions and earnings of the past seven years persist. Because the Baltimore & Ohio could perceive no material relief in the immediate future, and also because in the ensuing four years it will be required to meet maturities aggregating approximately $185,000,000, it prepared the proposed plan for modification of interest charges and extension of its maturities. Under the plan, fixed interest charges will be reduced and the more immediate maturities will be extended for such time as shall provide a reasonable opportunity for reestablishment of earnings and credit. The plan does not contemplate any reduction in the principal amount of the existing obligations or disturbance of their existing liens. It was developed as a desirable alternative to filing proceedings for reorganization of the capital structure under section 77 of the Bankruptcy Act, which the Baltimore & Ohio could do, but wishes to avoid, if possible, as it believes that the interests of its security holders and the public will be better and more promptly conserved under a voluntary plan. It is asserted, however, that for the success of a voluntary plan a prompt and favorable response of the bondholders is essential.

At the hearing it was testified that the plan preserves existing priorities of both principal and interest of Baltimore & Ohio issues, but makes such adjustment of interest as in the judgment of officers and directors of the interested companies, together with certain interested bondholders, appeared equitable. These adjustments are thought to be justified, particularly in the case of subsidiary lines, because the operating agreements, which provide for interest payments on the bonds of these companies, are proposed to be changed so that instead of being

cancelable on 60 days, notice by either party they are made continuous for the eight years during which the plan is to be operative and until all contingent interest is paid. Nothing herein, however, is to be construed as approving or authorizing the proposed modification of these operating agreements.

It was further testified that the companies realized that provisions would have to be made for a certain amount of additions and betterments required to maintain the property to proper standards, such as increased weight of rail, bridges, etc., and to meet commercial or operating requirements for new and additional branch lines, sidings, grade-elimination contributions, etc. The Baltimore & Ohio has no available first or underlying mortgage bonds and in the immediate future could not hope to sell refunding and general mortgage bonds, even at high rates of interest, at prices justifying their sale. The plan includes, therefore, a provision for setting aside out of available annual net income after fixed charges an amount not exceeding 2½ percent of total railway operating revenues for a capital fund. It was recognized further that the placement of interest payments on a basis that could be met under various conditions would not be sufficient to assure the financial stability of the Baltimore & Ohio for the time unless large nearby maturities were arranged for. These maturities include $50,000,000 of 5-year 4½-percent secured notes, due August 1, 1939, of which $13,490,000 are held by the Finance Corporation, and Baltimore & Ohio indebtedness of $72,771,578 to that corporation. It is proposed to extend all these obligations for five years from August 1, 1939, with interest at 4 percent, the Finance Corporation being favorable to such extensions provided the plan be declared operative before January 1, 1939, The early maturities also include Pittsburgh, Lake Erie & West Virginia refunding-mortgage 4-percent bonds in the amount of $64,410,400, of which $43,182,000 is outstanding in the hands of the public. These bonds will mature November 1, 1941, and are to be extended for 10 years from that date at their present rate of interest.

Testimony was to the effect that the plan leaves unprovided for, $3,000,000 of Cincinnati, Hamilton & Dayton Railroad Company general-mortgage bonds which will mature on June 1, 1942, and $21,960,000 of equipment-trust securities payable over several years in continually reduced annual amounts. Funds accruing from charges to operating expenses for depreciation of equipment, it is believed, will be sufficient to meet these maturities and to provide a reasonable basis for the purchase of equipment direct, or to make the necessary cash payment to enable the flotation of new equipment trusts for larger equipment purchases.

The capitalization of the Baltimore & Ohio and the subsidiary companies outstanding in the hands of the public as of August 15, 1938, is $1,000,151,613, of which $315,325,535 is capital stock, divided into $256,295,348 of common, $58,863,137 of preferred, and $167,050 of outstanding subsidiary stocks; $3,707,550 is guaranteed stocks of subsidiary companies underlying Baltimore & Ohio mortgages; $21,960,000 is Baltimore & Ohio equipment obligations; $612,686,378 is other funded obligations issued or assumed by the Baltimore & Ohio; and $46,472,150 is unassumed obligations of operated subsidiary companies. The funded debt, including guaranteed stocks, aggregates $638,353,928, exclusive of the $46,472,150 of funded debt of operated subsidiaries not assumed by the Baltimore & Ohio. The present annual interest charges on the funded debt of the Baltimore & Ohio are $29,288,683, and on the funded debt of its operated subsidiaries $2,133,059, making the total annual interest charges thereon $31,421,742.

The outstanding funded debt of the Baltimore & Ohio as of August 15, 1938, consisted of $81,994,850 of Baltimore & Ohio 4-present first-mortgage bonds, due July 1, 1948, $75,000,000 [2] of Baltimore & Ohio 5-percent first-mortgage bonds, due July 1, 1948, $45,000,000 [2] of Baltimore & Ohio Southwestern division 5-percent bonds, due July 1, 1950, $43,182,000 [2] of Baltimore & Ohio–Pittsburgh, Lake Erie & West Virginia refunding-mortgage 4-percent bonds, due November 1, 1941, $3,301,000 of Cleveland Terminal & Valley first-mortgage 4-percent bonds, due November 1, 1995, $3,525,000 of West Virginia & Pittsburgh first-mortgage 4-percent bonds, due April 1, 1990, $456,000 of West Virginia & Pittsburgh first-mortgage 4-percent bonds, due April 1, 1990 (held alive in sinking funds), $228,000 of Ohio & Little Kanawha first-mortgage 5-percent bonds, due March 1, 1950, $10,985,200 of Baltimore & Ohio, Toledo-Cincinnati division 4-percent bonds, due July 1, 1959, $3,000,000 of Cincinnati, Hamilton & Dayton general-mortgage 5-percent bonds, due June 1, 1942, $10,000 of Cincinnati, Hamilton & Dayton first and refunding 4-percent bonds, due July 1, 1959, $7,000 of Piqua & Troy Branch first-mortgage 4-percent bonds, due November 1, 1939, $1,211,250 of Dayton & Michigan guaranteed 8-percent preferred stock ,$2,396,950 of Dayton & Michigan guaranteed 3½-percent common stock, $99,350 of Home Avenue guaranteed 5-percent stock, $21,960,000 of Baltimore & Ohio equipment obligations, bearing interest at rates from 3½ percent to 5 percent, and maturing serially, $50,000,000 [2] of Baltimore & Ohio 5-year 4½-percent secured notes, due August 1, 1939, $69,816,578 [2] of Baltimore & Ohio Finance Corporation loans, bearing interest at the rate of 4 percent, and maturing from 1939 to 1942, $2,955,000 [2] of Baltimore & Ohio Public Works Administration loan, bearing interest at the rate of 4 percent and maturing serially, now held by the Finance Corporation, $1,424,000 of Baltimore & Ohio Public Works Administration equipment loan bearing 4-percent interest and maturing serially, $60,000,000 [2] of Baltimore & Ohio refunding and general series A 5-percent bonds, maturing December 1, 1995, $35,000,000 [2] of Baltimore & Ohio refunding and general series C 6-percent bonds, due December 1, 1995, $30,000,000 [2] of Baltimore & Ohio refunding and general series D 5-percent bonds, due March 1, 2000, $33,120,750 [2] of Baltimore & Ohio refunding and general series F 5-percent bonds, due March 1, 1996, $63,031,000 [2] of Baltimore & Ohio 30-year convertible 4½-percent bonds, due February 1, 1960, and $650,000 of Baltimore & Ohio Chicago Terminal real-estate mortgage bearing 5-percent interest, due May 1, 1938. The $21,960,000 of equipment-trust certificates referred to mature serially from 1938 to 1947, inclusive, in the respective amounts of $2,325,000, $4,076,000, $4,076,000, $3,533,000, $2,400,000, $1,650,000, $1,650,000, $750,000, $750,000, and $750,000. Series-H certificates, held by the Finance Corporation, are not included in this figure as they are shown separately above as a Public Works Administration loan. Exclusive of the Finance Corporation notes amounting to $72,771,578, which are proposed to be extended as heretofore stated, the amount of Baltimore & Ohio bonds and notes to be affected by the plan either by the modification of interest or by the extension of maturity, or by both methods is $434,333,750. Certificates of deposit are proposed to be issued for all the outstanding obligations the holders of which assent to the plan, as hereinafter more fully discussed. The obligations which are to be modified as described in the following paragraphs are to be stamped and returned to the holders, or new securities embodying the proposed modifications are to be issued in exchange therefor.



The interest on the $75,000,000 of Baltimore & Ohio first-mortgage 5 percent bonds, due July 1, 1948, to the extent of 1 percent, is not secured by any lien, and 1½ percent of the 5-percent interest on $45,000,000 of Baltimore & Ohio Southwestern division bonds, due July 1, 1950, is also unsecured by any lien. Under the plan, it is proposed to make this unsecured interest contingent for eight years from October 1, 1938, in the case of the first-mortgage bonds, and from January 1, 1939, in the case of the Southwestern division bonds. In other words 4 percent or $3,000,000, of annual interest charges on the $75,000,000 of first-mortgage 5-percent bonds will be a fixed charge, and 1 percent, or $750,000 annually, will be a contingent charge, payable annually if earned, but cumulative if not paid currently. On the $45,000,000 of Southwestern division 5-percent bonds, 3½ percent, or $1,575,000, will be an annual fixed charge, and 1½ percent, or $675,000, will be a contingent charge and cumulative.

The maturity date of Baltimore & Ohio-Pittsburgh, Lake Erie & West Virginia refunding-mortgage 4-percent bonds, in the amount of $64,410,400, is to be extended from November 1, 1941, to November 1, 1951, at the present rate of interest. Of these bonds, $43,182,000 are outstanding, $21,177,000 are pledged, and $51,400 are held in the treasury of the Baltimore & Ohio.

The $50,000,000 of Baltimore & Ohio 5-year secured 4½-percent notes, due August 1, 1939, are to be extended to mature August 1, 1944. They will bear interest at the present rate of 4½ percent to their present maturity date of August 1, 1939, and thereafter at the rate of 4 percent per annum, both rates to be a fixed charge. The notes will also be made redeemable, in whole but not in part, at any time after August 1, 1939, on 30 days' notice, at their principal amount and accrued interest. The collateral securing the notes will remain unchanged, except that the provisions of $38,000,000 of refunding and general-mortgage bonds, series E, constituting part of such collateral, will be modified as hereinafter described.

The $69,816,578 of Finance Corporation notes, bearing 4-percent interest, and maturing from 1939 to 1942, together with $2,955,000 of Public Works Administration 4-percent serial notes, acquired by the Finance Corporation, which mature semiannually July 1 and January 1 in each year to January 1, 1944, are proposed to be extended at the same rate of interest so as to mature five years after the effective date of the plan, or August 1, 1939, whichever date may be selected, but

[2] Of the indebtedness set forth, only these issues are to be affected by the proposed plan as hereinafter described.

the Baltimore & Ohio reserves the right of prepayment in whole or in part at any time. Interest on these notes will continue to be a fixed charge, and the collateral security therefor, consisting of $181,247,550 of stocks and bonds of the Baltimore & Ohio, of its subsidiary, or affiliated companies or of other companies, and assignments of various character, will remain unchanged, except that the provisions of certain system bonds included in the collateral will be modified.

The refunding and general mortgage bonds comprise six series, aggregating $260,272,000, of which series-A, series-D, and series-F bonds bear interest at the rte of 5 percent, and series-B, series-C, and series-E bonds bear interest at the rate of 6 percent. All of the series-B bonds, $73,200,250 of series-E bonds, and $12,500,000 of series-C bonds, an aggregate of $100,700,250 of bonds, are pledged, $1,447,000 of series-E and $4,000 of series-F bonds are held in the treasury, and the remaining series, aggregating $158,120,750, are outstanding. It is proposed that one-fifth of the interest, or 1 percent, on the series-A, series-D, and series-F bonds, and 1⅕ percent of the interest on the series-B, series-C, and series-E bonds will remain a fixed charge, and that the remaining interest in respect of the eight years from August 1, 1938, in the case of series-B bonds, September 1, 1938, in the case of the series-D and series-F bonds, October 1, 1938, in the case of the series-E bonds, and December 1, 1938, in the case of series-A and series-C bonds, will be made contingent and cumulative as provided in the plan. This modification will reduce fixed annual interest charges on the outstanding refunding and general mortgage bonds from $8,256,038 to $1,651,208, and the annual contingent interest charges will be $6,604,830.

The holders of refunding-mortgage bonds accepting the plan will thereby consent to the modification of the covenants of the refunding and general mortgage, so that the Baltimore & Ohio may at any time or from time to time extend, on such terms and for such periods as may be determined, (*a*) any outstanding bonds which underlie or which have a lien superior to the refunding and general mortgage and which mature before January 1, 1947, including the Pittsburgh, Lake Erie & West Virginia bonds, and (*b*), with the consent of holders of 66⅔ percent in principal amount of the refunding-mortgage bonds at the time outstanding, any other prior-lien bonds of any later maturity or maturities. A list of the underlying bonds and of the collateral pledged under this mortgage was introduced as an exhibit at the hearing.

In consideration of their acceptance of the plan, holders of refunding and general-mortgage bonds becoming bound thereby will be given the option to convert their bonds into common stock of the Baltimore & Ohio on the basis of $100 a share, with provisions for adjustment of the conversion price in case the Baltimore & Ohio should issue common stock at less than that conversion price, substantially similar to those now contained in the indenture under which the convertible 4½-percent bonds were issued, such right of conversion to remain in effect until 15 days prior to maturity or redemption.

Under the plan the issue of additional bonds under the refunding and general mortgage will be limited by reducing the principal amount issuable after January 1, 1939, on the basis of additions, betterments, and improvements, to 75 percent of the cost thereof and by permitting and requiring that in the case of bonds, if any, issued for the acquisition of equipment, the maximum term shall be 15 years, and an annual sinking fund shall be established at a rate adequate to retire at par any bonds so issued by their maturity.

In other respects the refunding and general mortgage will remain unchanged, and additional bonds with fixed interest rates may be issued thereunder as provided.

The $63,031,000 of Baltimore & Ohio 30-year convertible 4½-percent bonds, all of which are outstanding, are unsecured, and it is proposed that all interest on these bonds for the eight years from August 1, 1938, be made continetn and cumulative as provided in the plan. In consideration of the acceptance of the plan by the holders of the convertible bonds, the present right to convert them into common stock of the Baltimore & Ohio will be improved by (*a*) reducing the conversion price from its present bases of $125 a share before February 1, 1941, and $130 a share before February 1, 1946, to $100 a share, with the present provisions for adjustment of the conversion price in case the Baltimore & Ohio should issue common stock at less than the conversion price, and (*b*) extending such privilege throughout the term of the bonds, until 15 days prior to maturity or redemption.

The interest adjustments above outlined on the Baltimore & Ohio funded debt, while in effect, will reduce the annual fixed interest charges from $29,288,683 to $18,172,458, and the contingent interest charges will be $10,866,225 a year.



The securities of the three Baltimore & Ohio subsidiaries involved in these proceedings consist of $34,297,000 [3] of Buffalo consolidated-mortgage 4½-percent bonds, due May 1, 1957, $350,000 [3] a Lincoln Park & Charlotte Railroad Company, hereinafter referred to as Lincoln Park, first-mortgage 5-percent 50-year bonds, due January i, 1939, $2,000,000 of Allegheny & Western Railway Company first-mortgage 4-percent bonds, due October 1, 1998, $3,200,000 of lAlegheny & Western 6-percent guaranteed stock, $650,000 of Clearfield & Mahoning Railway Company, referred to hereinafter as the Clearfield & Mahoning, first-mortgage 5-percent bonds, $900,000 of Clearfield & Mahoning 6-percent guaranteed stock, $2,824,800 of Susquehanna first-mortgage 4-percent bonds, due December 30, 1963, $3,765,700 [3] of uSsquehanna first-mortgage 4-percent bonds, due December 30, 1963, held in sinking funds, bearing interest, and $4,675,000 [3] of Cincinnati first-mortgage 5-percent bonds, due November 1, 1964. The Baltimore & Ohio is seeking authority to assume obligation and liability, to the extent contemplated by the plan, in respect of interest or dividends on all these securities except those of the Susquehanna, of which it seeks such authority only in respect of $2,824,800 of first-mortgage 4-percent bonds.

Of the $34,297,000 of Buffalo consolidated-mortgage bonds, $5,183,000 are owned by the Baltimore & Ohio and pledged with the Finance Corporation to secure indebtedness to that corporation, and $29,114,000 are outstanding. These bonds bear interest at the rate of 4½ percent, and will be modified so that two-thirds of such interest will remain a fixed charge and the remaining third will made contingent and cumulative for the eight years from November 1, 1938. Holders of these bonds accepting the plan will thereby consent to the extension at any time of any outstanding bonds which underlie the consolidated mortgage and which have a lien superior thereto. It is not proposed to modify interest obligations on any of these underlying bonds except for the extension of the Lincoln Park bonds, hereinafter discussed, because of the small amounts involved.

The $350,000 of Lincoln Park first-mortgage 5-percent bonds, all of which are outstanding, will mature January 1, 1939. They will be extended for a period of 10 years at the same rate of interest, so that they will mature on January 1, 1949, and they will be made redeemable in whole, but not in part, at any time after January 1, 1939, on 30 days' notice, at their principal amount and accrued interest. The interest on these bonds will continue to be a fixed charge of the Buffalo.

Of the $6,590,500 of Susquehanna first-mortgage bonds, $2,824,800 are outstanding, and $3,765,700 are held in sinking funds. They are entitled to the benefit of a sinking fund which includes interest on bonds acquired by the operation of the sinking fund and held alive therein. It is proposed that no change be made in the interest payable on the outstanding bonds or in the principal installments of the sinking fund aggregating $50,000 a year, but bondholders accepting the plan will agree that no interest shall be paid on bonds held in the sinking fund for the eight years from December 31, 1938. The obligation to pay interest on bonds held in the sinking fund will, however, be extended for eight years after its present termination on January 1, 1949.

Of the $4,675,000 of Cincinnati first-mortgage 5-percent 50-year bonds, $1,000,000 is owned by the Baltimore & Ohio and pledged with the Finance Corporation to secure indebtedness, and $3,675,000 is outstanding. They bear interest at the rate of 5 percent. It is proposed that three-fifths of the interest on the outstanding bonds will remain a fixed charge and that the remaining interest for the eight years from November 1, 1938, will be made contingent and cumulative, as provided in the plan.

The modifications proposed for these operated subsidiaries will, while in effect, reduce the annual aggregate fixed interest charges on their funded debt from $2,133,059 to $1,472,221, and there will be $510,210 a year of contingent interest charges. The Baltimore & Ohio will, in the case of any such subsidiary for which the plan is consummated, relinquish its privilige of terminating the present operating agreement.

As in the case of the Baltimore & Ohio obligations, certificates of deposit are proposed to be issued for all outstanding bonds, and the modifications contemplated may be carried out either by delivering new forms of securities or by stamping existing securities and attaching additional or substituted coupons, pursuant to the plan.

The properties of these three subsidiaries are at present operated by the Baltimore & Ohio under operating agreements which may be terminated on 60 days' notice, and which require the Baltimore & Ohio to pay maturing interest, and to

[3] Only these issues are proposed to be modified by the plan.

lend moneys needed to meet any principal maturing while each respective agreement is in force, but the bonds of these subsidiaries are not at present assumed by the Baltimore & Ohio. The provisions of the plan are such that they may be effective whether carried out only by the Baltimore & Ohio, or by the Baltimore & Ohio and one or more of the subsidiaries involved.

The modifications proposed for the Baltimore & Ohio and for the three subsidiaries will, while in effect, reduce the total annual fixed interest charges on funded debt from $31,421,742 to $19,644,679, and there will be $11,376,435 a year of contingent interest charges. The amount of annual fixed interest charges will be reduced further through periodic retirements of equipment obligations.

The plan provides, as has been stated above, that the privilege of conversion into common stock of the Baltimore & Ohio at par, with proper provision for adjustment should shares be issued at less than $100 each, is to be extended to the refunding and general mortgage bonds, and to the 30-year convertible 4½-percent bonds as all or the greater part of the interest thereon has been made contingent. To convert all the issued bonds, including those pledged, will require the issue of $323,305,500 of stock. Our order of March 6, 1930, in *Baltimore & O. R. Co. Securities*, 162 I. C. C. 169, authorized the Baltimore & Ohio to issue $52,525,800 of common capital stock, consisting of 525,258 shares of the par value of $100 each, or so much thereof as might be necessary to effect the conversion into common capital stock of such of the $63,031,000 of 30-year 4½-percent convertible gold bonds, therein authorized to be issued, as might be presented for that purpose. These bonds were convertible at rates of from $120 to $130 at varying dates from 1931 to 1946, with a provision in the indenture securing them for adjustment of the conversion price of the stock in the event of the issue of additional common stock at less than the conversion price then in effect, except that no adjustment was to be made in the case of common stock issued to officers and employees of the Baltimore & Ohio at not less than par to an amount not exceeding $15,000,000. As none of this stock has been issued for conversion purposes, there will have to be authorized $270,779,700 of additional common stock to provide for the conversion of all the bonds to be accorded such rights. The charter of the Baltimore & Ohio authorizes the president and directors of that company to increase its capital stock from time to time, it being not necessary to procure an amendment thereof so as to provide for the issue of the additional shares required for conversion purposes.

As provided in the plan, fixed interest will be payable as at present and contingent interest on all bonds will be payable on May 1 in each year, beginning May 1, 1939. The contingent interest payable, if earned, on May 1, 1939, will be all the interest, except that remaining fixed, accrued for each respective issue from its respective last interest-payment date in 1938 to January 1, 1939, and, in determining whether such interest has been earned, available net income will be determined for the same respective periods. Contingent interest payable, if earned, on May 1, 1940, and on each May 1 thereafter to and including May 1, 1946, will be in each case the interest accrued for the preceding calendar year, plus all accrued unpaid interest for prior periods. Contingent interest payable, if earned, thereafter will be the contingent interest accrued for each respective issue from January 1, 1946, to the date in that year on and after which interest on such issue is unaffected by the plan, plus all accrued unpaid interest for prior years. Accrued and unpaid contingent interest on each issue of the Baltimore & Ohio bonds will accumulate as an absolute obligation, contingent as to time of payment, and will become payable (*a*) if, when, and to the extent that, available net income in any calendar year is sufficient for the purpose after making the prior payments specified in the plan, in which case it will be payable on May 1 of the next succeeding year, or (*b*) whenever the principal of the respective issue becomes payable, at maturity or by acceleration or otherwise.

The plan further provides that, (*a*) if the Baltimore & Ohio shall not pay or extend or renew, within six months after their respective maturities as provided therein, or as further extended, the Finance Corporation notes and at least 90 percent of the 4½-percent secured notes, or (*b*) if, and when, after the consummation of the plan, a petition, or answer admitting the allegations of a petition, shall be filed by the Baltimore & Ohio under any provision of the Bankruptcy Act or similar law at the time in force, or a permanent or confirmed appointment shall be made of any trustee or receiver for the Baltimore & Ohio or the greater part of its properties, then, in either event, all interest made contingent under the provisions of the plan shall become fixed interest, and the coupons representing such contingent interest shall become due and payable on the respective dates stated therein. The obligations of the Buffalo and the Cincinnati in respect of contingent interest on their bonds are to be the same as those of the Baltimore & Ohio in respect of its bonds, as above indicated.



Under the plan, the available net income is to be determined for each calendar year beginning with the year 1939, and continuing thereafter so long as any obligations for contingent interest remain outstanding. It will be determined by deducting from the income of the Baltimore & Ohio available for fixed charges for such calendar year (1) all fixed charges of the Baltimore & Ohio and its operated subsidiaries accrued during such period, (2) all other charges properly deductible from such income in determining income after fixed charges under our accounting rules, but excluding interest which in such calendar year is contingent, and capital-fund and sinking-fund requirements, as described hereinafter, and (3) all interest theretofore contingent which becomes absolutely payable in such calendar year without regard to earnings, whether accrued in such calendar year or in prior calendar years. If, in any calendar year the income of the Baltimore & Ohio available for fixed charges is inadequate to pay the amounts specified in (1), (2), and (3), the amount of such deficit may, in the discretion of the board of directors of the Baltimore & Ohio, be carried forward and be deducted in determining available net income for the succeeding calendar year or years until such deficit, or accumulated or remaining deficits, are extinguished by earnings which, in the absence of such deficit or deficits, would be available net income. Debits or credits to adjust income in prior years are to be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts, so far as they reflect cash receipts or disbursements in the year in which they are entered on the books.

Available net income for each calendar year is to be applied to the following purposes in the order shown:

1. If determined by the board of directors of the Baltimore & Ohio, it may be applied to the creation of a capital fund to be applied to, or to provide for, or to reimburse the treasury of the Baltimore & Ohio for, capital investments or advances to subsidiaries whose earnings or losses are included in the Baltimore & Ohio's income account for expenditures which, if made directly by the Baltimore & Ohio in respect of its owned properties, would be charged to capital investments or such substituted accounts as may at the time be in effect, and including therein, but only to the extent that such payments during such calendar year exceed depreciation of equipment charged against income for such calendar year, initial and principal payments upon equipment leased under equipment trusts or purchased under conditional-sale agreements, to the extent that such capital investments have been made or contracted for during such calendar year or within three months thereafter, provided, however, that (*a*) the amount so set aside in the capital fund shall not in any calendar year exceed 2½ percent of the total railway operating revenues of the Baltimore & Ohio for such calendar year, less depreciation of roadway and structures charged against income in such calendar year, plus the amount, if any, by which available net income for the last preceding calendar year shall have been less than the maximum amount permitted for the capital fund for such year by the preceding provisions of this paragraph; (*b*) the capital fund may be applied only to such part of the cost of capital investments as above defined as shall remain after deducting from such cost all retirements of roadway and structures charged against income in such calendar year; (*c*), to the extent that expenditures shall be so provided for or reimbursed out of the capital fund, the Baltimore & Ohio shall not thereafter have the right to issue any bonds or other evidences of indebtedness to capitalize or reimburse such expenditures (provided, however, that such expenditures may be used to supply, in whole or in part, any excess of capital expenditures required to be certified to the trustee under any indenture over the principal amount of the bonds or other obligations that may be issued under the terms of such indenture); and (*d*) any amount which shall be available for the capital fund under the foregoing provisions, but which shall not be expended, or appropriated to meet liabilities incurred, before the end of the year for which it has been set aside or within three months thereafter, shall not be carried forward.

2. Any then remaining available net income for the calendar year 1939, but not for any subsequent year, up to $10,000,000 may, in the discretion of the board of directors, be applied to increase the Baltimore & Ohio's net working capital.

3. Any then remaining available net income for any calendar year shall be applied pro rata to the payment of (*a*) contingent interest on the refunding bonds, (*b*) contingent interest on the Buffalo consolidated bonds, and (*c*) contingent interest on the Cincinnati bonds, in each case up to the total contingent interest accrued thereon to the end of such calendar year and remaining unpaid.

4. Any then remaining available net income for any calendar year shall be applied pro rata to the payment of (*a*) contingent interest on the first-mortgage 5-percent bonds, (*b*) contingent interest on the Southwestern division bonds, and (*c*) contingent interest on the convertible bonds, in each case up to the total contingent interest accrued thereon to the end of such calendar year and remaining unpaid.

5. Seventy-five percent of any then remaining available net income for the calendar years 1939–43, inclusive, and 50 percent of any then remaining available net income for each calendar year thereafter, shall be paid into the sinking fund, to be applied as provided thereunder.

6. Any then remaining available net income for any calendar year may, subject, to the provisions of the plan, be applied to any proper corporate purpose of the Baltimore & Ohio.

It is also provided that no contingent interest need be paid on any issue of bonds if the amount to be paid be less than one-fourth of 1 percent. Any amount available for contingent interest on any issue, but not paid because of the foregoing provision, is to be reserved and added to the amount available for contingent interest on such issue for the next succeeding calendar year. Payments of contingent interest on refunding bonds, Buffalo consolidated bonds, and Cincinnati bonds are to be made, as among the several issues, in proportion to the unpaid interest accrued on the bonds of these respective issues to the end of the last preceding calendar year, and, as among the several series of refunding bonds, in proportion to the unpaid interest accrued on the bonds of such respective series to the end of the last preceding calendar year. All payments of contingent interest on the first-mortgage bonds, the Southwestern division bonds, and the convertible bonds are to be made, as among the several issues, in proportion to the unpaid interest accrued on the bonds of those issues, respectively, to the end of the last preceding calendar year. The plan provides that any contingent interest may at any time be paid, in the directors' discretion, even if not then mandatorily payable by the terms thereof, provided that, unless then mandatorily payable by the terms thereof, no contingent interest shall be paid on first-mortgage bonds, Southwestern division bonds, or convertible bonds unless all contingent interest accrued on outstanding refunding bonds, Buffalo consolidated bonds and Cincinnati bonds to the end of the last preceding calendar year shall have been paid or set aside for payment. It also provides that dividends may not be paid on stock of any class except out of earnings subsequent to December 31, 1938, nor unless, prior to the declaration of such dividends, all contingent interest for prior calendar years shall have been paid or deposited in trust, and the board of directors shall have determined that the available net income for the current calendar year applicable for the purposes hereinbefore specified will be sufficient to pay the amounts payable out of such available net income pursuant thereto and such amounts shall have been deposited in trust for those purposes. Available net income for any period between August 1, 1938, and January 1, 1939, shall be determined as indicated, but no deductions for capital or sinking funds shall be made.

The plan also provides for a sinking fund, which is to be created in consideration of the extension of maturities and the change of interest from fixed to contingent. Sinking-fund installments are to be payable, if and to the extent earned, out of income for the calendar year 1939 and every calendar year thereafter until all obligations for contingent interest have been paid, and $100,000,000 aggregate principal amount of obligations have been retired by the operation of the sinking fund. Payments into the sinking fund are to be made on May 1, of the year next following the year out of the income of which they are paid. Sinking fund payments for the five years 1939–43 are to equal 75 percent of the available net income that remains after deductions made pursuant to paragraphs 1, 2, 3, and 4 set forth above. Subsequent to 1943 sinking-fund payments are to equal 50 percent of the available net income that remains after deductions made pursuant to those paragraphs, or, after all obligations for contingent interest have been paid, 50 percent of net income as defined by our accounting rules or practice. Additional sinking-fund payments may be made in the discretion of the Baltimore & Ohio. Not less than one-third of the sinking-fund payments made in the 1939–43 period, and not less than one-half of the sinking fund payments made thereafter, are to be applied to the payment, purchase, or redemption of obligations, other than equipment-trust obligations, of the Baltimore & Ohio or an operated subsidiary, secured by lien on physical property or securities. The remaining amount of each sinking-fund payment is to be applied within 12 months after such payment is made, in the discretion of the board of directors of the Baltimore & Ohio, (*a*) to the retirement of obligations as described, (*b*) to the creation



and maintenance of net working capital in such amount as shall in the judgment of the board of directors be adequate and requisite for the purposes of the Baltimore & Ohio, or (*c*) to capital investments as defined by our accounting rules. Bonds or other available obligations may be purchased for sinking-fund purposes in the open market or otherwise at not exceeding the redemption price, if they have redemption features, and at not more than their principal amount and accrued interest, if they are not redeemable. The Baltimore & Ohio may pay matured obligations or redeem redeemable obligations of any such issue or issues. All obligations retired by the sinking fund will be canceled and no bonds or other obligations may be issued to refund them. Likewise no bonds or other evidences of indebtedness may be issued to capitalize or reimburse capital expenditures made out of the sinking fund, although such expenditures may be used to supply in whole or in part any excess of capital expenditures required to be certified to the trustee under any indenture over the principal amount of bonds or other obligations that may be issued under the terms of such indenture.

To accept the plan, holders of affected issues are to deposit their securities in negotiable form with one of the appointed agents, with written assents executed in prescribed form, although assents may be accepted without the deposit of securities. Title to deposited securities will pass only to transferees of their respective certificates of deposit. Depositing security holders will be reimbursed, on request, for all ordinary expenses of forwarding their securities for deposit. Deposited securities are to be accompanied by all coupons maturing after January 1, 1939, and interest payable thereon prior to the consummation of the plan is to be paid to the registered owners of certificates of deposit, which will be issued for all securities deposited, in the general form submitted with the applications. Assents to the plan may be revoked and deposited securities may be withdrawn at any time after December 31, 1938, and before the plan has been declared operative, provided the charges and expenses of the agent for services in connection with such withdrawal are paid at the time of withdrawal.

The plan may be declared operative whenever the board of directors of the Baltimore & Ohio believe a sufficient number of holders of obligations affected thereby have become subject to the plan to make it advisable to do so. It will become operative when so declared by the Baltimore & Ohio and when notice thereof has been published in the manner provided on or before January 1, 1939, or such later date as may be determined. If the plan has been declared operative as to the securities of the Baltimore & Ohio, it may be declared operative as to the securities of any one or more of the subsidiaries involved. The plan may be modified or amended, but notice thereof must be given to the holders of obligations affected by such modification, and notices are also to be mailed to holders of obligations assenting to the plan, and to holders of certificates of deposit for such obligations. Holders of obligations of any class so affected may revoke their assets and withdraw deposited obligations of such class by notice in writing accompanied by surrender of their certificates of deposit. The plan may be abandoned by the Baltimore & Ohio at its option at any time prior to its consummation, whether or not declared operative, by publishing notice of such abandonment in the manner provided, whereupon all obligations theretofore deposited will be returned to holders of certificates of deposit without expense to the holders.

Subsequent to such authorization or approval by us as may be required to carry out the plan, acceptance by the holders of at least 90 percent of the securities of each issue affected by it will be required before any securities will be stamped or exchanged for new securities. All expenses of carrying out the plan are to be borne by the Baltimore & Ohio.

If the board of directors of the Baltimore & Ohio so determines, the plan may be carried out through proceedings under section 77 of the Bankruptcy Act or similar law at the time in force, or such other legal proceedings as they may deem appropriate to effect it as to nonassenting minorities. The assents of security holders provide that they shall be effective as assents to the plan in any such legal proceedings as fully as if executed after the institution of such proceedings, and the depositor or the assenting security holder shall appoint and constitute the Baltimore & Ohio as his duly authorized attorney and representative to accept the plan in such proceedings, subject, however, to withdrawal rights in the event of modification of the plan. However, in view of the facts that no proceedings for a receivership or for reorganization under section 77 of the Bankruptcy Act, as amended, are now pending, and that no application has been presented to us under section 77 (p) of the Bankruptcy Act, for authority to use or employ such proxies, we do not at this time pass upon that phase of the plan, and nothing herein is to be construed in any wise as a determination thereof or an approval of the use of such proxies in any other proceeding.

If the plan becomes effective for any of the subsidiaries, their present operating agreements with the Baltimore & Ohio are to be modified so as to provide that (1) the sums to be paid thereunder by the Baltimore & Ohio shall include sums equal to the obligation of that company, to the extent provided in the plan, in respect of all interest on funded debt of such subsidiary to and including the respective principal maturities, without any obligation on the part of the Baltimore & Ohio in respect of such principal maturities, and (2) the Baltimore & Ohio shall not have the right to terminate such agreement prior to the maturity of the Buffalo consolidated bonds, the Susquehanna first-mortgage bonds, or the Cincinnati bonds, as the case may be. If the plan does not become effective for any of these subsidiaries, the Baltimore & Ohio may, if it so determine, terminate the applicable operating agreement in accordance with the terms thereof, in which event the Baltimore & Ohio would be under no further obligation in respect of the securities of that company.

When the plan is consummated, a supplemental indenture will be executed for each of the issues affected thereby, other than the Finance Corporation notes, giving effect to the changes contemplated by the plan, the supplemental indentures to be in such form as the Baltimore & Ohio may determine. Such supplemental indentures will provide that the extended bonds or notes shall continue to be secured by the same liens as at present, and that the obligations of the Baltimore & Ohio in respect of interest secured by a mortgage lien which becomes contingent under the plan shall not cease to be entitled to the benefit of such mortgage lien pro rata with the bonds and the other interest obligations secured by such lien. Our order herein will provide that, upon consummation of the plan, and within 10 days after the execution of such supplemental indentures, a copy of each, in executed form, shall be filed with us.

At the hearing it was testified that of the $470,000,000 of bonds affected by the plan, $87,700,000, or over 18 percent, is held by insurance companies, $103,268,000, or nearly 22 percent, by banks and savings institutions, $35,262,000, or more than 7 percent, by educational and other institutions, $37,942,000, or 8 percent, by corporations, and $192,211,000, or about 41 percent, by individuals and partnerships.

Of the bonds and notes to be extended, $43,182,000 of Pittsburgh, Lake Erie & West Virginia 4-percent bonds are held by about 3,581 individuals and companies, $50,000,000 of 5-year 4½-percent secured notes by about 5,600 individuals and companies, and $350,000 of Lincoln Park first-mortgage bonds by about 50 individuals and companies.

Through personal contact a large number of security owners have expressed their approval of the plan and tendered their cooperation toward its fulfillment, according to testimony given at the hearing. Through direct contacts and through subcommittees of insurance companies and savings banks, tentative assurances of acceptance of the plan by more than 30 percent of the affected bonds are indicated. Of 350 letters received in acknowledgment of a letter mailed by the Baltimore & Ohio to its security holders, only 20 have objected, and but 10 have expressed definite opposition to the plan. A vice president of a life-insurance company testified in support of the plan, stating that his company held $11,299,000 of Baltimore & Ohio bonds, of which approximately $10,000,000 would be affected thereby. The general counsel for the National Association of Mutual Savings Banks also appeared in support of the plan and his testimony was to the effect that the institutions represented by him held obligations of the Baltimore & Ohio and of the three subsidiaries involved amounting to between $55,000,000 and $60,000,000, of which around 50 percent thereof would be affected by the plan.

The Baltimore & Ohio filed a statement purporting to show the application of the plan to past operating results. It shows average annual income available for fixed charges, including subsidiaries now operated by it, for the periods 1924 to 1930, for 1931 to 1937, and for 1924 to 1937, as $54,891,668, $31,838,943, and $43,365,305, respectively. After deducting fixed charges of $20,558,906, $20,582,128, and $20,570,517 remaining fixed under the plan, there remained available for other charges for each period $34,332,762, $11,256,815, and $22,794,788, respectively. Deductions for maximum appropriation for capital fund (2½ percent of total railway operating revenues of $6,405,270, $3,736,681, and $5,070,976, respectively) would leave available for secured contingent charges $27,927,492, $7,520,134, and $17,723,812, respectively, subject, for the year 1939 only, to deduction of not exceeding $10,000,000 to increase net working capital. Deducting secured contingent charges of $7,115,040 in each period would reduce these amounts to $20,812,452, $405,094, and $10,608,772, respectively, which would be the amounts available for unsecured contingent charges. Deductions of $4,261,395 for unsecured contingent interest charges would leave available



net income of $16,551,057, $3,856,301 deficit, and $6,347,377, respectively, for each period. An appropriation of 75 percent of available net income for the sinking fund would leave a net surplus of $4,137,764 for the first period, a $3,856,301 deficit for the second period, and a net surplus of $1,586,844 for the third period.

The expense of carrying out the proposed plan has not yet been accurately estimated. Final arrangements have not yet been made with the depositaries, and when made the estimate will depend upon the number of bonds deposited and the number of bonds from whose holders assents are accepted without deposit of bonds. The expenses of solicitation will be dependent on the length of time it takes to put the plan into effect and on the amount of work involved. However, the general work of solicitation, correspondence, and records will be conducted by the officers and employees of the Baltimore & Ohio under the general supervision of the manager of its commercial-development department. The Baltimore & Ohio expects to assign to the work of solicitation approximately 100 of its regular employees, whose compensation is not included in the estimate of cost of expenses. The total expenses of solicitation, including printing, postage, and mailing, but excluding compensation of regular employees, is estimated at approximately $175,000. Excluding counsel fees, the amount of which has not been ascertained, the estimate of all expenses for carrying out the plan is given as $1,063,140, which is less than one-fourth of 1 percent of the total principal amount of outstanding obligations to be affected thereby. These figures are dependent upon the assurance within three months of the success of the plan, and that it may be fully carried out in not more than six months.

The certificates of deposit will be issued by the various depositaries as agent for, and in the names of, the respective companies the securities of which are deposited under the plan. The certificates will be dated the dates of issue, will be in three forms, one applicable to bonds issuable in both coupon and registered form, one applicable to bonds in coupon form only, and one applicable to bonds in fully registered form only. The certificates will certify that the person named therein, or a predecessor in interest, has deposited under the plan of August 15, 1938, a given amount of bonds of the issue designated on the face thereof, with or without appurtenant coupons maturing after January 1, 1939, as the case may be, and has assented to the plan, and that the registered owner is entitled, in respect thereof, to the rights provided in the plan and is bound thereby. The certificates will provide that the registered owner thereof shall be entitled to receive, without expense, upon consummation of the plan and the surrender of the certificate, the bond or bonds so deposited, appropriately stamped in accordance with the plan, and if in coupon form, with coupons attached representing interest payable in accordance with the plan. The certificates will also provide that if the plan is abandoned the registered owner shall be entitled to receive, without expense, upon surrender of the certificate, the bond or bonds so deposited with all unpaid coupons, if any, maturing after January 1, 1939. The registered owner also will, upon the surrender of the certificate after December 31, 1938, and before the plan has been declared operative, and upon the payment of the reasonable charges and expenses of the agent issuing the certificate for services in connection with the withdrawal of the bonds, be entitled to receive the bond or bonds deposited with any coupons maturing after January 1, 1939. If the plan is modified or amended, notice of the modification or amendment is to be given as provided in the plan, and if any such modification or amendment affects the bonds of the issue represented by any particular certificate of deposit, the owner is to be entitled, without expense, upon surrender thereof within 30 days after the publication of the notice, to receive the bond or bonds so deposited with the appropriate coupons attached. If the certificate is not surrendered within the 30 days' period, the owner is to be deemed to have consented to such modification or amendment and to be bound thereby, with like effect as if such modification or amendment had been part of the plan prior to the depositor's assent thereto. Provision is also made that if prior to the consummation of the plan any interest is paid by the company issuing the certificate on the bonds of an issue represented thereby for any period covered by a coupon or interest claim appertaining to the deposited bonds of such issue, the agent holding the deposited bonds shall collect the interest and transmit it to the registered owners of certificates of record on such date as the agent may determine. Provision will also be made that where the indentures under which the securities were issued shall provide for the interchange of coupon and registered bonds, if a registered bond shall be deposited, the owner may, at his election, require the delivery to him of a coupon bond of the same issue and for the same aggregate principal amount bearing coupons for interest from the date to which interest shall have been paid on the fully registered bond or bonds. Certain of the certificates will also provide that if they represent more than $1,000, principal

amount, of bonds the registered owner of the certificate may at any time surrender the certificate and receive in lieu thereof certificates representing $1,000, principal amount, of the bonds. The certificates will further provide that the interest represented thereby shall be transferable upon the books of the company at the office of the agents by the registered owner, or his duly authorized attorney, upon surrender of the certificate properly endorsed for transfer. The certificate is to be issued subject to the condition, to which every registered owner by the acceptance thereof consents and agrees, that the title to the certificate, when properly endorsed, and the interest represented thereby, is to be transferable with the same effect as in the case of a negotiable instrument, but the company and the agent issuing the certificate may treat the registered owner thereof, or, when presented properly endorsed in blank, the bearer thereof, as the absolute owner for all purposes. It thus appears that the holders of the proposed certificates of deposit are to be accorded special and peculiar rights, varying widely from the rights generally given to holders of the usual certificates of deposit and similar receipts. We think there is sufficient basis, therefore, for differentiating such certificates from such receipts. Upon consideration of all the circumstances pertaining to the proposed certificates of deposit we are of the opinion that they may be regarded as evidences of indebtedness, and the authorization of the issue thereof as within the jurisdiction conferred by section 20a of the Interstate Commerce Act.

Under the proposed plan the Baltimore & Ohio is requesting authority to issue, in respect of its notes held by the Finance Corporation, notes to a principal amount of $72,771,578. Section 5 of the Reconstruction Finance Corporation Act provides that a railroad may obligate itself in such form as prescribed and otherwise comply with our requirements and those of the Finance Corporation with respect to the deposit or assignment of security, without the authorization or approval of any authority, State or Federal, and without compliance with any requirement, State or Federal, as to notification other than such as may be imposed by us and the Finance Corporation under the provisions thereof. Authority under section 20a of the Interstate Commerce Act to issue such notes is therefore not required, and that part of the Baltimore & Ohio application seeking such authority will be dismissed for want of jurisdiction. Nothing herein is to be construed as approving the extension for five years of the maturities of the indebtedness represented by these notes.

Because of what they believe to be a temporary financial embarrassment the applicants ask authority under section 20a to extend maturing obligations and to change certain interest payments from fixed to contingent time of payment. Interest made contingent will accumulate as an absolute obligation. Payment will depend on various contingencies, but in no event may it be deferred beyond the maturity of the obligation to which it relates. Thus the ultimate burden on the property is not reduced. Debt is merely postponed. This constitutes a weakness in the plan. Whether this defect requires our disapproval of the applications, is the prime question presented.

To make the arrangement effective, however, substantially all security owners affected by it must consent. We are not asked to approve the plan as such. Our authorization will place applicants in position to seek the approval of their security holders. The alternative is clearly reorganization under the bankruptcy statute. In such a proceeding, security holders undoubtedly would be called on for much greater immediate sacrifices than this plan contemplates. Approval of the applications by us will make the option available to the parties interested.

In view of the facts presented on this record we have reached the conclusion that an opportunity to try to secure approval of the plan by security holders should be accorded.

We find that, pursuant to a proposed plan for modification of interest charges and maturities, dated August 15, 1938, (1) (*a*) the issue by The Baltimore and Ohio Railroad Company of not exceeding $64,410,400 of Pittsburgh, Lake Erie & West Virginia system refunding 4-percent mortgage bonds, $50,000,000 of secured notes, $75,000,000 of first mortgage 5-percent bonds, $45,000,000 of Southwestern division first-mortgage 5-percent bonds, $260,272,000 of refunding and general mortgage bonds, and $63,031,000 of 30-year 4½-percent convertible bonds, in each case for an equal principal amount of existing bonds or notes, or the modification of the existing bonds and notes, as to maturities and interest, as therein provided; and of not exceeding $434,333,750 of certificates of deposit in respect of $43,182,000 of Pittsburgh, Lake Erie & West Virginia system refunding 4-percent mortgage bonds, $50,000,000 of 5-year 4½-percent secured notes, $75,000,000 of first-mortgage 50-year 5-percent bonds, $45,000,000 of Southwestern division first-mortgage 5-percent bonds, $60,000,000 of refunding and general mortgage 5-percent bonds, series A, $35,000,000 of refunding and general mortgage 6-percent bonds, series C, $30,000,000 of refunding and general mortgage 5-percent bonds, series D, $33,120,750 of refunding and general mortgage 5-percent bonds, series F, and $63,031,000 of 30-year 4½-percent convertible bonds; (*b*) the assumption of obligation and liability by The Baltimore and Ohio Railroad Company in respect of interest or dividends on not exceeding $34,297,000 of consolidated-mortgage 4½-percent bonds of the Buffalo, Rochester & Pittsburgh Railway Company, $350,000 of first-mortgage 5-percent 50-year bonds of the Lincoln Park & Charlotte Railroad Company, $2,000,000 of first-mortgage 4-percent bonds and $3,200,000 of guaranteed 6-percent stock of the Allegheny & Western Railway Company, $650,000 of first-mortgage 5-percent bonds and $900,000 of guaranteed 6-percent stock of the Clearfield & Mahoning Railway Company, $2,824,800 of first-mortgage 4-percent bonds of the Buffalo & Susquehanna Railroad Corporation, and $4,675,000 of first-mortgage 5-percent 50-year bonds of the Cincinnati, Indianapolis & Western Railroad Company; and (*c*) the issue by The Baltimore and Ohio Railroad Company of not exceeding $270,779,700 of common capital stock, consisting of 2,707,797 shares of the par value of $100 each, for the purpose of converting into common capital stock such refunding and general mortgage bonds and 30-year convertible 4½-percent bonds as may be presented for that purpose; (2) the issue by the Buffalo, Rochester & Pittsburgh Railway Company of not exceeding $34,297,000 of consolidated 4½-percent mortgage bonds and $350,000 of Lincoln Park & Charlotte Railroad Company first-mortgage 5-percent 50-year bonds, in each case for an equal principal amount of existing bonds of those companies, or the modification of the existing bonds, as to interest and maturity, as therein provided; and of not exceeding $29,464,000 of certificates of deposit for $29,114,000 of consolidated-mortgage 4½-percent bonds, and $350,000 of first-mortgage 5-percent 50-year bonds of the Lincoln Park & Charlotte Railroad Company; (3) the issue by The Cincinnati, Indianapolis & Western Railroad Company of not exceeding $4,675,000 of first-mortgage 5-percent 50-year bonds in respect of an equal principal amount of existing bonds of that company, of the modification of the existing bonds, as to interest as provided; and of not exceeding $4,675,000 of certificates of deposit for an equal principal amount of first-mortgage 5-percent 50-year bonds; and (4) the issue by the Buffalo & Susquehanna Railroad Corporation of not exceeding $2,824,000 of first-mortgage 4-percent bonds for an equal principal amount of existing bonds of that company or the modification of the existing bonds, as to interest on such bonds in sinking funds, as provided in the plan, and of not exceeding $2,824,800 of certificates of deposit for an equal principal amount of first-mortgage 4-percent bonds, all as aforesaid, (*a*) are for lawful objects within their respective corporate purposes, and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by them of service to the public as common carriers, and which will not impair their ability to perform that service, and (*b*) are reasonably necessary and appropriate for such purposes.

An appropriate order will be entered.



Mr. ANDERSON. Then I should like, in that connection, to explain our position—to offer a copy of the letter which I wrote to Mr. Chandler, commenting on Mr. Eastman's letter.

The CHAIRMAN. Very well.

Mr. ANDERSON. I think that is printed in the hearing before the House committee, but I am not sure.

(The letter referred to is as follows:)

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE

LAW OFFICES

RICHMOND, VA., *March 25, 1939.*

Hon. WALTER CHANDLER,
*Chairman, Subcommittee of the Judiciary Committee,*
*House of Representatives, Washington, D. C.*

DEAR CONGRESSMAN CHANDLER: I have just had an opportunity to read a copy of a letter of Hon. Joseph B. Eastman, chairman of the legislative committee of the Interstate Commerce Commission, written on behalf of that committee to the Honorable Hatton W. Sumners, chairman of the Committee on the Judiciary of the House of Representatives, on March 17, 1939, with reference to H. R. 3704, commonly known as the Chandler bill, pending before that committee.

As you know, I am deeply interested in this bill both as a citizen and as counsel for the Baltimore & Ohio Railroad Co., which, if the bill is passed, desires to avail itself of its provisions. My admiration for the members of the Interstate Commerce Commission who constitute the legislative committee is such that I hesitate to take issue with them on any matter affecting the railroads. But as I have had a good deal to do with the development of this legislation, I am constrained to feel that the discussion thereof contained in the letter of March 17 from Commissioner Eastman to Chairman Sumners is based to a substantial extent, at least, upon a misapprehension of the intention and probable operation of the measure. I venture, therefore, to submit certain comments for your consideration and, if desired, that of Chairman Sumners and the committee.

It is manifest from a reading of the letter that some certain modifications of the bill which were made by the Senate committee and are included in the committee print of March 21, 1939, were not before Mr. Eastman and his associates at the time that the letter was written. Some of the points made by him have been met by these modifications.

(1) As to the treatment of stockholders: The Committee print of March 21, 1939, amends the original draft of the bill so as to expressly include "modifications of the *securities* or capital structures" and the word "securities" is defined as including all securities which are within the jurisdiction of the Commission under section 20a of the Interstate Commerce Act. This clearly includes, therefore, the authority to make any modification in the capital stock of the company by such plan of adjustment. It has always been my view that these details should be fully covered in the plan itself and that any plan which was in the public interest and could possibly meet the approval of the requisite percentage of creditors and of the court under the test provided in the act would necessarily provide for such modification, if any, of the interests of stockholders as might be necessary to make the plan clearly conform to the public interest and be just and equitable. Such modifications would vary as to each particular case and therefore these matters were left to be dealt with in each plan. If there could have been any doubt on this subject, however, it has clearly been removed by the amendments made by the subcommittee.

(2) It is suggested in the letter referred to that the bill is predicated upon the theory that the railroads are passing through a temporary period of low earnings, and it is suggested that the improvement in earnings which would be necessary to comply with the requirements of the capital structure as set out in a plan may not be realized, in which event the railroad and security holders would be in a worse position than before.

This suggestion narrows the possible operation of the bill to an extent not justified by its provisions. There is no reason why, assuming that a plan is in the public interest and that the requisite consent of the security holders is obtained, the capital and debt structure of a railroad should not be permanently readjusted upon howsoever lower a basis that may be necessary to insure its solvency for the future under any conditions which can now be anticipated. While the specific plans which have been heretofore brought before the Commission do provide for an accumulation of interest which is now fixed, and is made contingent under such plans, it does not follow that these plans have exhausted the possibilities of this bill, since any readjustment of the capital structure which the Commission might find to be in the public interest and to which the debtor might obtain the requisite assents of security holders might be effected under the bill.

Assuming, however, that plans under the bill should make provision merely for the postponement or extension of certain charges and obligations without permanently reducing them, it does not follow that such a plan would fail to conserve both public and private interests involved. It is manifestly desirable that the shocks to credit incident to the bankruptcies of great railroad systems and the resulting losses to security holders should be avoided, if possible. If, therefore, the management of a railroad company and its security holders agree that the outlook for the property as well as the general business outlook warrants the expectation that with some relief covering a reasonable period the property can bear its existing charges, without prejudice to the public interest, and the creditors are willing to grant that relief, and the Commission finds that it is in the public interest that it be done, it certainly can do no harm to anyone to give the debtor and its creditors a chance to use every reasonable effort consistent with the public interest to avoid the shock of bankruptcy and the final loss to its security holders. Even if they should be mistaken and the plan should ultimately fail, the only effect would be to continue the existing indebtedness with such accumulation of interest as a claim ahead of stockholders as might be permitted by the plan. In that event the public would certainly not be prejudiced by having the interest



accumulate instead of being paid and the bondholder would not be prejudiced by keeping his claim alive instead of having it entirely destroyed. The stockholder would not be hurt by giving him at least a chance to work the situation out rather than wiping him out of his property entirely at this time. It is difficult to see, therefore, how any one could be any worse off even if the expectations of the proponents of such a plan were not ultimately realized, while they would all be infinitely better off if such expectations were realized.

In this connection it is suggested that the property might deteriorate in the meantime through the effort of the company to meet its obligations under the plan. It is to be assumed that the Commission charged with the duty of protecting the public interest would not find a plan to be in the public interest unless it did make adequate provisiou for the maintenance and essential capital expenditures on the property so as to avoid this very result. It is equally to be assumed that the creditors would not assent to a plan which did not contain such provisions. This assumption is supported by the fact that in every plan so far as I am advised that the Commission has approved in reorganization, and in all plans of adjustment which have been presented to the Commission up to this time, specific provisions are contained for just these contingencies. In the case of the Baltimore & Ohio plan, not only is provision made for what are deemed adequate capital expenditures for the proper maintenance and development of the property but also for the reservation of working capital and for the ultimate payment out of earnings ahead of stock of as much as $100,000,000 of existing debt. In view of these obvious facts I must decline to believe that the Commission would not fully discharge its clear obligations in this connection under the act or that the creditors would not have due regard for their own interest in this respect.

Indeed, I am convinced that this bill will go far to avoid the very conditions which Commissioner Eastman mentions. If proper maintenance may be jeopardized by fixed charges at present earnings levels in the case of any particular carrier, it is far better to afford relief from such fixed charges through the means of this bill than to compel the carrier to struggle on in order to avoid the intricate disasters of bankruptcy under section 77. To facilitate adjustments of this character will promote and protect the ability to continue proper policies of maintenance expenditure.

(3) The suggestion is made that the Commission finds itself in an embarrassing position when assents to plans are obtained in advance of the presentation of the plan to them for consideration under section 20a of the Interstate Commerce Act, and the case of *Chicago, Milwaukee and St. Paul Reorganization* (131 I. C. C., 673, 679), is cited as an illustration of this embarrassment. I entirely concur with the views of the Commission in this regard. In my view the public interest in railroads being dominant, the first step in putting a plan of reorganization or adjustment of capital structure into effect should be to present the matter to the Commission so that it may determine whether the proposed readjustment would be in the public interest. This bill meets exactly that situation by providing that the first step in the procedure shall be to present the plan to the Commission for its consideration and findings under section 20a. It is true that the committee print provides for prior assurances of support for the plan from the holders of securities of at least 25 percent affected thereby. This provision is merely intended to insure such consultation between the company and its creditors as would be reasonable in any event before a plan was presented and such assurances of support from the creditors as will furnish a reasonable probability that if the Commission finds the plan to be in the public interest it can be carried into effect. This is what was done in the Baltimore & Ohio plan and the Commission found that the assurances of more than 30 percent of the affected security holders furnished reasonable ground for the belief that the plan, if approved, could be carried into effect. The embarrassment discussed in the letter of Mr. Eastman, therefore, would not exist with respect to the procedure under this bill if the same were enacted into law. In other words, the bill does exactly what Mr. Eastman suggests should be done on page 8 of his letter.

(4) It is suggested (letter, p. 10) that if Congress desires the Commission to go thoroughly into the basic merits of a plan of adjustment it should make this intention clear and specific in the language of the bill. I, frankly, do not fully understand the purport of this suggestion. The bill as drawn clearly contemplates that the Commission should go fully into the merits of the proposed readjustment insofar as the public interests are affected. This would involve the consideration, among other things, of the modifications in interest charges, the relief given to the property by the plan, and the provisions made for the proper maintenance of the service and financing of its requirements during the period in which the plan is in effect, as well as any provisions, if any, made for the ultimate reduc-

tion of indebtedness either by agreement or by payment at the expense of its stockholders. On the other hand, the private interests as between the company and its creditors would not be within the scope of the Commission's inquiry under this statute, since, assuming the public interest to be fully protected or served, the company and its creditors have the right to make or modify their contracts as they may see fit, provided such modifications are made in accordance with the law and their respective rights under the law. This aspect of the matter is left for the determination of the court as a judicial question, and the court alone is competent under our constitutional system to determine it. It follows, therefore, that this statute properly allocates the respective functions of the Commission as an administrative body charged with the protection of the public interest, the company and the creditors as contracting parties, and the courts as judical bodies charged with the adjudication of private rights.

(5) In conclusion it may be observed that under the law as it exists today the railroads may do, and some have done, everything proposed by this bill except to make a plan of adjustment effective as to small minorities. They may invoke the action of the Commission under section 20a as to the issue or modification of securities as contemplated by the act. They may negotiate adjustments with their creditors or security holders as contemplated by the act. The only present difficulty is that there is no machinery for making such adjustment after it has been found to be in the public interest and has been assented to by an overwhelming majority of securities affected thereby, binding as to small minorities who (*a*) cannot be found or will not act, or (*b*) are subject to legal disabilities so that they cannot assent, or (*c*) desire to gain some inequitable advantage. The sole purpose of the act is to give the court power under such conditions to make a plan which it finds just and equitable, effective as to such minorities. Where all interests, both public and private, are thus fully safeguarded, every consideration of sound policy requires that this be done.

It is not my desire to prolong this letter to consider other detailed suggestions in the communication of Mr. Eastman, but the points which have been discussed seem to be vital in this bill. I venture to express the hope, therefore, that the views herein set forth may receive the consideration of yourself, Chairman Sumners, and of the committee. I am transmitting a copy of this letter to Mr. Eastman and his associates on the legislative committee of the Interstate Commerce Commission.

Very sincerely yours,

———— ————.

Mr. ANDERSON. Then I should like to offer the finding and report of the Commission on the plan, so as to show just what did take place and where we stood. That is the report to which I referred a moment ago.

Then I should like to offer for your information the latest report which I have, which is for May 10, 1939, showing by classes the amount of securities and number of security holders who have assented to the plan, which shows 85.59 percent of securities and 56,439 security holders out of 77,717. That gives an indication of the work that has been done.

(Baltimore & Ohio Railroad Co. statement of progress to May 10, 1939, is as follows:)



*The Baltimore & Ohio R. R. Co., statement of progress to May 10, 1939, amount and number of holdings reported*

| Issues | Total holdings | Amount reported | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Deposits | | Assents | | Will deposit | | Declined | | Total | | | |
| | | Amount | Percent | Amount | Percent | Amount | Percent | Amount | Percent | Amount | Percent | | |
| (1) 1st mtge., 5's | $75,000,000 | $15,904,000 | 21.21 | $53,970,500 | 71.96 | | | | | $69,874,500 | 93.17 | | |
| (2) R&G "A," 5's | 60,000,000 | 20,961,500 | 34.94 | 28,981,500 | 48.30 | | | | | 49,943,000 | 83.24 | | |
| (3) R&G "C," 6's | 35,000,000 | 15,029,500 | 42.94 | 11,310,000 | 32.32 | | | | | 26,339,500 | 75.26 | | |
| (4) R&G "D," 5's | 30,000,000 | 11,257,500 | 37.53 | 13,297,500 | 44.32 | | | | | 24,555,000 | 81.85 | | |
| (5) R&G "F," 5's | 33,120,750 | 11,837,250 | 35.74 | 14,828,000 | 44.77 | | | | | 26,665,250 | 80.51 | | |
| Total R&G | 158,120,750 | 59,085,750 | 37.37 | 68,417,000 | 43.27 | | | | | 127,502,750 | 80.64 | | |
| (6) S-W Div., 5's | 45,000,000 | 12,354,000 | 27.45 | 27,639,000 | 61.42 | | | | | 39,993,000 | 88.87 | | |
| (7) PLE&WVa., 4's | 43,182,000 | 8,488,000 | 19.66 | 31,835,000 | 73.72 | | | | | 40,323,000 | 93.38 | | |
| (8) 20-yr. Con., 4½'s | 62,031,000 | 22,196,000 | 35.91 | 17,722,000 | 28.12 | | | | | 40,358,000 | 64.03 | | |
| (9) 5-yr. Notes, 4½'s | 60,000,000 | 14,148,000 | 28.30 | 16,543,000 | 33.08 | $13,490,000 | 26.98 | | | 44,181,000 | 88.38 | | |
| (10) B&S 1st, 4's | 2,568,000 | 886,800 | 34.52 | 1,073,100 | 41.79 | | | | | 1,959,700 | 76.31 | | |
| (11) B1&P Cons., 4½'s | 29,114,000 | 9,686,000 | 33.28 | 14,770,000 | 50.73 | | | | | 24,456,000 | 84.01 | | |
| (12) DT&W 1st, 5's | 3,675,000 | 1,250,400 | 34.03 | 1,697,500 | 46.18 | | | | | 2,947,900 | 80.21 | | |
| (13) LF&C 1st, 5's | 350,000 | 120,000 | 34.29 | 123,000 | 35.14 | | | | | 243,000 | 69.43 | | |
| Total | 470,040,750 | 144,561,750 | 30.76 | 233,790,100 | 49.73 | 13,490,000 | 2.87 | | | 391,841,850 | 83.36 | | |
| Reconstruction Finance Corporation loans | 72,771,578 | | | | | 72,771,578 | | | | 72,771,578 | | | |
| Grand total | 542,812,328 | 144,561,750 | 26.63 | 233,790,100 | 43.07 | 86,261,578 | 15.89 | | | 464,613,428 | 85.59 | | |

*The Baltimore & Ohio R. R. Co., statement of progress to May 10, 1939, amount and number of holdings reported—Continued*

| Issues | Total holders | Number reported | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Deposits | | Assents | | Will deposit | | Declined | | Total | |
| | | Number | Per-cent | Number | Per-cent | Number | Per-cent | Number | Per-cent | Number | Per-cent |
| (1) 1st mtge., 5's | 7,555 | 3,230 | 42.75 | 2,432 | 32.19 | | | | | 5,662 | 74.94 |
| (2) R&G "A", 5's | 11,707 | 5,989 | 50.73 | 2,320 | 19.82 | | | | | 8,259 | 70.55 |
| (3) R&G "C", 6's | 9,883 | 5,577 | 56.43 | 1,771 | 17.92 | | | | | 7,348 | 74.35 |
| (4) R&G "D", 5's | 5,160 | 2,745 | 53.20 | 1,075 | 20.83 | | | | | 3,820 | 74.03 |
| (5) R&G "F", 5's | 8,141 | 4,128 | 50.71 | 1,813 | 22.27 | | | | | 5,941 | 72.98 |
| Total R&G | 34,891 | 18,389 | 52.71 | 6,979 | 20.00 | | | | | 25,368 | 72.71 |
| (6) S-W Div., 5's | 6,454 | 3,356 | 52.00 | 1,831 | 28.37 | | | | | 5,187 | 80.37 |
| (7) PLE&WVa., 4's | 3,680 | 1,499 | 40.73 | 1,613 | 43.84 | | | | | 3,112 | 84.57 |
| (8) 30-yr. Con., 4½'s | 12,471 | 5,347 | 42.88 | 2,122 | 17.01 | | | | | 7,469 | 59.89 |
| (9) 5-yr. Notes, 4½'s | 6,331 | 2,889 | 45.63 | 1,877 | 29.55 | 1 | 0.02 | | | 4,767 | 75.30 |
| (10) B&S 1st, 4's | 731 | 378 | 51.71 | 194 | 26.54 | | | | | 572 | 78.25 |
| (11) BR&P Cons., 4½'s | 4,754 | 2,595 | 54.59 | 1,046 | 22.00 | | | | | 3,641 | 76.59 |
| (12) LE&W 1st, 5's | 804 | 434 | 53.98 | 184 | 22.89 | | | | | 618 | 76.87 |
| (13) LF&C 1st, 5's | 46 | 22 | 47.83 | 21 | 45.65 | | | | | 43 | 93.48 |
| Total | 77,717 | 38,139 | 49.07 | 18,299 | 23.55 | 1 | .001 | | | 56,439 | 72.62 |



Mr. ANDERSON. Now, Senator, in working out the situation, in which I was chief counsel and had general charge, we tried not to use any instrumentalities that cost money. We have tried to keep down the expenses. Therefore, no bankers have been employed to solicit assents—as is usually the case—except as to a few securities some of which are abroad, where we had no way of communicating with them except through the banking houses. We have used the organization of the Baltimore & Ohio itself. These men have been the ones who have done the soliciting, to the extent we have solicited, assents to the plan. We have incurred some necessary expense for depositories, and so forth. However, it has involved an enormous amount of labor and some unavoidable expense. We have filed with the Commission an estimate of all the expenses we contracted for and all the expenses that we incurred, so far as we could do so, and are willing to file a complete statement of what the expenses were, if and when the plan is effectuated.

Suggestion has been made that the expenses should be controlled by the court. In this case there is no fund from which to make any allowance at all. This bill gives no authority, even in its present form, to do anything that the company could not do today, except to bind the minority. We applied to the Commission, as we had the right to do, to find if what was proposed was in the public interest. We applied to the Commission and obtained their finding under section 20 (a). We have obtained assents of 85 percent of the affected securities. The only thing we cannot do without this act is to bind the minority. There are people with securities held in trust, under wills and so forth, where they have no authority to assent to change their relationship. I am told that that particular group represented something like $50,000,000, or 10 percent of the securities affected. They are willing to give assent but they cannot do so. A second group is those who do not act from inertia or who cannot be found. The third group is the very nominal amount represented by those people who want to give trouble. They want to collect 100 cents on the dollar when everybody else is accepting less favorable treatment. All this bill was intended to do was to provide machinery by which in a common-sense way, a railroad could adjust its affrairs with its creditors and get the approval of the court to bind the small minority represented by these classes and thus not treat the minority better than the majority—which has been an evil existing in this kind of procedure in the past. That is all the bill does or purports to do. This is certainly not unreasonable but it is clearly desirable.

It has been suggested that the bill be limited to the Baltimore & Ohio and the Lehigh Valley Railroads. Senator, I am not going to argue on that subject. It is not my province. We proposed this bill in good faith; we feel that it is sound legislation. We do not want to ask for special legislation of any kind. However, in view of the large amount of labor involved—the circumstances of which Mr. Willard has so eloquently presented to the committee—and because of the considerable expense we have incurred, we are anxious to have this plan put through without delay, and we are prepared to do it.

The CHAIRMAN. The reason I am anxious to limit it to those cases that have already been presented and approved, where the work has been done and approved by the Commission—and this is my own, personal reason—is that this committee has not had the time to give the

matter a careful and serious consideration. Now, if your plans work out all right and are satisfactory, and if we can work out some details of this legislation, with further time and investigation, then it may be that we might be willing to go further. However, at this time I think it is wise to limit it. I know of no other roads.

Mr. ANDERSON. I do not, either; but I have no disposition to debate that. I only say that, having given 6 or 7 years of unceasing study to this problem of reorganization, I am willing to help if I can to work it out on any reasonable basis.

The CHAIRMAN. I think we can work it out.

Mr. ANDERSON. As far as the constitutionality is concerned where so limited, there was difficulty in my mind which has been removed. I want to cooperate with the committee. My immediate interest is to get the Baltimore & Ohio plan through; and, as you say, if we go that far and get that through, then we have made a constructive step and a good step. Later we may go further. You can limit the bill, for instance, to companies that have earned within 10 percent of their interest charges over a period of the last 6 or 7 years. Of course I recognize the force of your position. I should like to say that we believe the bill to be sound, and we proposed it in good faith, and feeling that it is in the public interest; and we are prepared to cooperate in any way we can.

The CHAIRMAN. Well, we shall try to work it out, and to work it out speedily.

Mr. ANDERSON. All right, Mr. Chairman. Thank you.

The CHAIRMAN. At this point I wish to have placed in the record the letter from Commissioner Eastman.

(The letter referred to is as follows:)

INTERSTATE COMMERCE COMMISSION,
*Washington, May 8, 1939.*

Hon. BURTON K. WHEELER,
*Chairman, Committee on Interstate Commerce,*
*United States Senate.*

MY DEAR SENATOR: The chairman of the Commission has brought to the attention of our legislative committee your letter of April 29, 1939, requesting comments on H. R. 5407, "To amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto." This bill has had the careful consideration of the legislative committee, and by direction of the Commission I am authorized to submit the following comments in its behalf.

The bill H. R. 5407 would provide, through so-called plans of adjustment, for postponements or modifications of debt, interest, rent, and maturities, or for modifications of the securities or capital structures of railroads not in process of reorganization under section 77 of the Bakruptcy Act. It undertakes to amend that section by adding a new chapter entitled "Chapter XV. Railroad Adjustments."

The purpose of the bill appears to be primarily to enable a railroad company which is unable to meet its debts to escape bankruptcy and subsequent reorganization under section 77 by a voluntary postponement or modification of obligations with the assent of a large majority of its creditors, and by making such assent binding on the minority who fail to assent; and, secondarily, for a railroad company in equity receivership to accomplish a reorganization by similar means. The plan, in broad outline, is to secure authority from the Commission under section 20a of the Interstate Commerce Act for the issue of the contemplated new or modified securities after having first secured the assent of creditors holding at least 25 percent of the aggregate amount of claims affected by the plan, and thereafter gain the assent of creditors holding more than two-thirds of such claims, and then to present the plan to the court for its approval. Once approved by the court, it is apparently the thought that the plan can be made effective without the assent of all of such creditors.



It appears that it is the intent of the bill to sanction virtual moratoriums for railroad companies which are unable to meet their debts, or in other words to permit payments of interest or principal to be postponed for a time without in any way extinguishing or modifying the right to ulitmate collection. Such a plan can be justified only on the theory that the railroad company is passing through a temporary period of low earnings which will be succeeded, at no very distant date, by a return to high or comparatively high earnings, for unless this happens, nothing will be accomplished except to defer the evil day and make it worse when it finally arrives. We note that the House Committee on the Judiciary states in a report accompanying H. R. 5407 that the bill, if enacted, is intended primarily to apply to railroad companies in temporary financial difficulties and requiring temporary relief, but not so involved as to require thorough overhauling of their capital structures.

As to some railroads, there is certainly as much reason to guess that there will not be as that there will be a return to high or comparatively high earnings. If there is no such return, the ultimate state of the creditors of a railroad, after such a moratorium as H. R. 5407 contemplates, will not be better but on the contrary will be worse. Such a result is all the more to be feared, because of the fact that the management of the company, in its endeavor to prevent a breakdown of the plan, may be expected to neglect the proper upkeep and improvement of the property. There has, in our judgment, been a tendency to temporize with the situation of railroads that cannot reasonably be expected to meet their charges without an actual reduction, and this bill appears to contain possibilities of a continuance of that policy. While the process is painful, we believe that, unless it is reasonably clear that a railroad's troubles are only temporary, a realistic and drastic readjustment of its capital structure under the provisions of section 77 is in general to be preferred in the public interest, and also in the interest of its creditors, to a mere postponement of debt.

In a report, dated March 17, 1939, to the House Committee on the Judiciary on H. R. 3704, which was the original form of H. R. 5407, we had this to say:

"It may be that those who are responsible for this bill realize its dangers, but depend upon the Commission to supply the necessary safeguards in the exercise of its authority under section 20a. As has been indicated, the Commission's function would be limited by the bill to the authorization under that section of the issue or modification of securities, as proposed in the plan of adjustment. Such authorization requires findings by the Commission that the proposed issue or modification (*a*) is for some lawful object within the corporate purposes of the railroad company, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the railroad of service to the public as a common carrier, and (*b*) is reasonably necessary and appropriate for such purpose.

"It is true that by a broad interpretation of its power and duty under section 20a the Commission could go into the merits of the plan of adjustment and refuse to authorize the issue or modification of the securities, if it concluded that the plan was basically unsound. However, an analogy may be drawn with the situation by which the Commission has in the past been confronted in connection with plans of reorganization for railroads in equity receivership. Such a plan is usually worked out by a group known as reorganization managers in negotiation with committees representing the various classes of security holders. After what are deemed to be sufficient consents are secured, the plan is presented to the court for its approval. If and when the court has given its approval, the Commission is asked to authorize under section 20a the issue of such new or modified securities as the plan contemplates.

"In such a case the Commission is placed in a difficult and embarrassing position. Normally, much time and money have been spent in working out the reorganization plan, and when at length the Commission is called upon to act, it is faced with the fact that the plan is the result of such a long and costly process of negotiation, and has received the approval of the court and of a very large proportion of the security-holders who would be affected thereby. If the Commission withholds approval, therefore, it assumes the responsibility of undoing what has so laboriously been done with the agreement of most of those directly affected and the approval of a court, and of making it necessary to start the process all over again.

"In such circumstances the Commission is naturally reluctant to oppose its judgment to that of the court and of those immediately concerned, especially when the result would be to prolong indefinitely the sojourn of the railroad in receivership. In several reorganization cases which came before the Commission

prior to the enactment of section 77, a majority of the commissioners were clearly swayed by such reluctance, as is shown by the following quotation from the decision in *Chicago, Milwaukee & St. Paul Reorganization* (131 I. C. C. 673, 699):

" 'It seems appropriate here to recall that in the last several years we have permitted to become effective a number of reorganization plans involving capital structures which, like that dealt with in this report, left something to be desired from the point of view of fully sound financial structures. We have done this in full appreciation of these shortcomings, and solely upon the ground that the major public interest seemed to us to require that the properties concerned should at the earliest possible moment be released from receivership and restored to active management by those financially interested therein.'

"Subsequent events proved that the apprehensions of the Commission in regard to "shortcomings" of these plans were fully justified, for a number of the properties which were so reorganized are now in bankruptcy. It was, in fact, chiefly because of this experience and the general dissatisfaction with receivership reorganizations that section 77 was passed, and one of the main objectives of that legislation was to place greater responsibility upon the Commission with respect to reorganization plans, and to bring it into the active consideration of such plans from the very beginning, instead of waiting until the end.

"Under H. R. 3704, the Commission would be called upon to act prior to the presentation of the plan to the court, and in this respect the procedure would differ from that which has been followed in receivership reorganizations. However, as in the latter, the duties of the Commission would be limited to the exercise of its authority under section 20a, and it would be given no responsibility in connection with the preparation of the plan. Any veto power which it might exercise over the plan would, therefore, be wholly indirect and derived by construction from a power over the issue of securities. The bill would also permit the proponents of a plan to apply to the Commission for the necessary authority under section 20a after all negotiations had been completed and the requisite assents had been secured under section 710.

"In such circumstances it is quite conceivable that the Commission might entertain the same reluctance to use its power over securities for the purpose of vetoing the plan that it exhibited in connection with receivership reorganizations prior to section 77. That this is conceivable is shown by the action of Division 4 of the Commission in Finance Docket No. 12150, *Baltimore & Ohio Railroad Company Financial Reorganization* (230 I. C. C. 243), a copy of which decision is attached hereto in accordance with your request. It will be noted that there Division 4 was asked to authorize certain modifications of securities in accordance with an adjustment plan proposed by the railroad company and providing for a postponement of interest payments and maturities of certain of its debt obligations, for the purpose of avoiding bankruptcy and a thorough-going reorganization under section 77. It is just such a plan as H. R. 3704 apparently contemplates. In its report, the Division said, among other things:

" 'Because of what they believe to be a temporary financial embarrassment the applicants ask authority under section 20a to extend maturing obligations and to change certain interest payments from fixed to contingent time of payment. Interest made contingent will accumulate as an absolute obligation. Payment will depend on various contingencies, but in no event may it be deferred beyond the maturity of the obligation to which it relates. Thus the ultimate burden on the property is not reduced. Debt is merely postponed. This constitutes a weakness in the plan. Whether this defect requires our disapproval of the applications, is the prime question presented.

" 'To make the arrangement effective, however, substantially all security holders affected by it must consent. *We are not asked to approve the plan as such.* Our authorization will place applicants in position to seek the approval of their security holders. The alternative is clearly reorganization under the bankruptcy statute. In such a proceedings, security holders undoubtedly would be called on for much greater immediate sacrifice than this plan contemplates. Approval of the applications by us will make the option available to the parties interested.' (Italics ours.)

"It will be evident, we think, that if the Congress desires this Commission, in passing upon the issuance of securities under legislation such as is proposed in H. R. 3704, to go thoroughly into the basic merits of the plan of adjustment, this intent should be made clear and specific in the language of the bill."

Perhaps as a result of this comment, the provisions of H. R. 3704 with respect to the action required of the Commission have been modified in H. R. 5407. It is provided that this action shall be had after creditors holding at least 25 percent of the aggregate amount of the claims affected by the plan of readjustment have agreed to accept the plan, but before assents have been secured from creditors holding more than two-thirds of such aggregate amount. It is also provided that the order of the Commission shall include a "specific finding that such proposed issuance or modification of securities is in the public interest, is consistent with the continuance by the railroad corporation of service to the public as a common carrier, and will not impair its ability to perform such service."



We are uncertain whether these modifications of the original language of H. R. 3704 were made to meet the recommendation, above quoted, in our report to the House Committee that "if the Congress desires this Commission, in passing upon the issuance of securities under legislation such as is proposed in H. R. 3704, to go thoroughly into the basic merits of the plan of adjustment, this intent should be made clear and specific in the language of the bill." On this point our opinion is divided. One view is that the specific findings which we would be required to make under H. R. 5407 differ so little from those which are now specified in section 20a that they would not enlarge or change our authority and duty. The other view is that the provision for such specific findings manifestly is intended to effect a change and by its emphasis on the "public interest" and the service of the railroad corporation to the public does make it necessary for the Commission to go thoroughly into the basic merits of plans of adjustment. This difference of opinion, however, indicates that the intent is still in need of clarification.

We also are of the opinion that this question should be definitely settled for another reason. Section 710 of H. R. 5407 provides that petitions for plans of adjustment may be filed by corporations which have before the effective date of this act complied with paragraphs 1, 2, and 3 of this section. The Commission, Division 4, has, by appropriate reports and orders, approved the issuance and modifications of securities under plans of adjustment such as are contemplated by H. R. 5407 in the cases of the Baltimore & Ohio Railroad Co. and the Lehigh Valley Railroad Co. We understand that these carriers have compiled with the other provisions of paragraphs 1, 2, and 3 of section 710, and in the event H. R. 5407 becomes law these carriers would be entitled to file petitions for court approval of plans of adjustment without further action by this Commission, if H. R. 5407 is to be construed to the effect that our functions are to be limited to those now provided in section 20a. If this is the proper construction, there should be no uncertainty in this connection. The filing of supplemental applications would be expensive and time-consuming. On the other hand, if it is intended that our functions are to be enlarged under the proposed legislation, there also should be no uncertainty that supplemental applications must be filed with us by these carriers in the event they contemplate filing petitions in court for the approval of their plans. The question whether further consideration of these plans by us is required should not be left in doubt.

Apart from section 710, the only other reference in the bill relating to duties of the Commission is in section 740 where it is proposed to limit to 120 days the period within which the Commission shall act upon an application for authority to issue or modify securities pursuant to a plan of adjustment. While the Commission clearly recognizes the desirability of prompt disposition of such proceedings, it is suggested that the words "and in any event within one hundred and twenty days after the filing of such application," appearing at the end of section 740, be eliminated. It may well be that such a limitation would result in the neglect of the public interest or the right and interest of parties in particular cases, and, in any event, it seems to serve no useful purpose. It will be noted that section 727 providing for the dismissal of the proceeding by the court unless the plan of adjustment as submitted, or as modified, shall have been confirmed by the court within 1 year from the date of filing the petition, provides that the proceedings may, in the discretion of the court and on proper application be continued.

The report of the House Judiciary Committee states that it is not contemplated that any plan of adjustment can be approved by the court for railroad companies where the continued participation of stockholders in the company can be maintained only at the sacrifice of substantive rights of creditors.

To preclude this, the bill provides that the plan must be "fair and equitable, is in the public interest, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders." While the purpose of such provisions is, in our opinion, an excellent one, we believe that consideration should be given to the question whether such provisions may not

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preclude approval of any plans of adjustment. As stated in the report, such provisions have been interpreted in section 77 proceedings to require that a plan of reorganization must conform to the principles of *Northern Pacific Railway Company* v. *Boyd*, 228 U. S. 482. It is clear from the provisions of H. R. 5407 that all plans of adjustment thereunder will modify the rights and interests of creditors, at least to the extent of postponing the claims of creditors for payment of interest and payment of principal at existing dates of maturity. It is not so clear that the rights and interests of stockholders will be modified in any such plan, although it may be that provisions requiring the accumulation out of earnings of a capital fund and a sinking fund prior to dividend payments would be so construed. The question is presented, therefore, whether the postponement or deferment of claims of creditors in the absence of any modification of the rights of stockholders would not be violative of the doctrine of the *Boyd case*. This appears to be a judicial question and on it we express no opinion.

Your attention is directed also to the fact that railroad companies undergoing reorganization under section 77 are specifically precluded under the bill from filing petitions requesting approval of plans of adjustment, although companies in receivership are not so precluded. Apparently the thought is that companies in trusteeship under section 77 are in such bad shape financially that they should not be allowed to file petitions under this bill, if enacted. Our information is to the effect that the financial condition of companies now in receivership is not very different from that of companies undergoing reorganization under section 77. Moreover, if proceedings for the reorganization of a company under section 77 are dismissed for any cause, such a company would immediately become eligible to attempt a reorganization under the provisions of this bill. Your attention is directed to the further fact that the bill contains no specified provisions controlling fees or allowances to comities or counsel, or the activities of reorganization managers. It would seem that this is a duty which should be imposed upon the court in connection with its supervision over the carrying out of the plan.

In our report to the House committee on H. R. 3704 we also had this to say:

Section 721 of the bill provides that after hearing the special court may approve the plan as filed or modify it and approve the same as so modified. This section provides further that if the court modifies the plan substantially and adversely to affect the interests of any class of creditors, the modified plan shall be resubmitted to creditors affected by the modifictaion and shall not be finally approved until the action of creditors on the modified provisions is reported to the court. It will be noted, however, that no provision is made specifically requiring the filing with the Commission of a supplemental application under section 20a of the Interstate Commerce Act to obtain the authorization of the Commission of such differing issue or modification of securities.

In view of the provision in section 725 of the bill that after approval of the plan of adjustment by the court and the entering of a decree by the court "* * * the petitioner shall have full power and authority to and shall put into effect and carry out the plan and orders of the special court relative thereto and issue the securities provided by the plan without further reference to or authority from the Commission or any other authority, State or Federal * * *," it is not clear whether or not it is thought that a supplemental application to the Commission under section 20a of the Interstate Commerce Act to obtain the Commission's authorization to the differing issue or modification of securities would be essential to validity of such securities. If it is intended or thought desirable that the Commission's authorization of the issue or modification of securities different from those which the Commission had approved prior to the filing of the petition should be obtained, provision therefor should be made in section 721.

H. R. 5407 appears in this respect to be open to the same comment and criticism.

You ask in your letter whether the Interstate Commerce Commission would recommend H. R. 5407 for passage. We prefer to express our opinion in another form. We are in accord with the objects of the proposed legislation as explained in the report of the House Committee on the Judiciary. If the bill is amended so as to exclude railroads in receivership and to make clear the intent of Congress that the Commission shall, in connection with applications hereafter filed with it, pass upon the basic merits of proposed plans of adjustment, we believe that the bill might in some instances serve a useful purpose.

Respectfully submitted.

JOSEPH B. EASTMAN,
*Chairman, Legislative Committee.*

The CHAIRMAN. Mr. Brooks, we are ready to hear from you now.



## STATEMENT OF EUGENE S. BROOKS, A MEMBER OF THE FIRM OF MARSHALL, CAMPBELL & CO., NEW YORK CITY

Mr. BROOKS. Mr. Chairman, my name is Eugene S. Brooks. I am a member of the stock exchange firm of Marshall, Campbell & Co., New York City, a publisher of three various railroad statistical services. I am appearing here, sir, as chairman of the protective committee of the Central Railroad of New Jersey bondholders.

I might preface my remarks by saying that, as a member of a stock exchange firm, every client of ours has assented—and every bond—to the Baltimore & Ohio plan and the Lehigh Valley plan. That is true of every client we have approached, and we have tried to cover them all.

I am in opposition to the Chandler bill as it affects controlled roads and, particularly, the company which I represent—or, I should say, as it affects the bondholders of this company, which is the Central of New Jersey. I can see in this bill a perpetuation of the evils which existed under section 77, in connection with controlled lines.

For purposes of discussion I have selected four roads, here. The first is the Eastern Illinois, where the management's plan was presented on February 13, 1937. The old common stock was preserved, to the extent that it received one-third of a share of the new common stock. In the Interstate Commerce Commission plan of November 1938 the old common stock was wiped out. That road is controlled by another road.

The second one is the Chicago, Indianapolis & Louisville. In the management's plan of 1937 the old common stock received share for share in new common stock. In the Interstate Commerce Commission's plan of 1938 the old common stock was wiped out.

Next, in the Missouri Pacific Railroad the plan of 1937 provided that the old common stock, preferred, would receive participating warrants. In the Interstate Commerce Commission's plan of October 1938, the old common stock, preferred, was wiped out.

Subsequently, with the Cotton Belt, or the St. Louis-Southwestern Railway Co., the management's plan of December 1936, provided that the old common was to have a participation of 35 percent in the new common. In the Interstate Commerce Commission's plan the participation was cut down to 10 percent. My contention is that the Chandler bill would be very injurious to the creditors of the controlled lines.

The CHAIRMAN. What do you mean by "the controlled lines"?

Mr. BROOKS. Well, through the bondholders of the Chicago & Eastern Illinois Railroad, or the bondholders of the Chicago, Indianapolis & Louisville. That road is 93 percent controlled by two parent roads. They came along with a reorganization, where the things were scaled down 63 percent. The equity or the control is eliminated. Since the filing of the Interstate Commerce Commission's plan there have been, I believe, four interventions, and I think you will find that they represent creditor interests.

In the case of the Central Railroad of New Jersey, which deferred its April 1 interest, and has a 90-day grace period, I do not think the Chandler bill operates. I say that for this reason: As I view it, the Central Railroad of New Jersey is not in need of solely a financial reorganization. My understanding is that the management is now

approaching the institutional holders and, under the tentative or informal discussions, I understand the objective is a 75 percent reduction in interest. There is only one bond issue on the Central of New Jersey, so there is no conflict of liens, or anything of that sort; there is only one bond issue. If the Central of New Jersey had reduced its bond interest 75 percent, April 1, 1938, they still would have a deficit of $70,000,000. The Central of New Jersey is controlled by the Reading Co. It lets the Reading Co. into tidewater, through the highest taxed area in the country.

It seems to me that any plan of reorganization there, if it were proposed under the Chandler bill, would be presented to a court. In this specific instance I think it is a problem for the Interstate Commerce Commission, in the division of rates and the various tariffs; and I do not think that a court is qualified to pass on the division of rates, on 156 different classifications of freight.

I might further add that the bond interest of the Central of New Jersey absorbed less of the revenue dollars than did the bond interest of the Burlington, the Chesapeake & Ohio, or the Union Pacific—which are among our best credit roads of the country.

I do not want in any way to obstruct any legislation that is going to hasten railroad reorganizations; but it appears to me that section 77, which was designed to hasten railroad reorganizations, has been used to perpetuate a controlling interest that might otherwise have been eliminated.

Those who favor the Chandler bill, as I understand it, are opposed to the appointment of a trustee. The management of the Central of New Jersey is, I would say, virtually the same as the management of the Reading. What is the position of the creditor in that case? I do not think the road could compose its difficulty by seeking shelter under the Chandler Act; and I would cite that as one specific instance in which I am particularly interested; but there are any number of roads in the country that are in the same situation: the Louisville & Nashville, with the control by the Coast Line. The Louisville & Nashville has a large bond issue coming due in 1940. I see no reason why they could not apply to the court for an extension of that bond issue when it matures.

Mr. Chairman, I remember very definitely that in May 1932 the representatives of the St. Louis-Southwestern Railroad came to our office and asked that we extend the maturity that came due in June 1932. The proposition was made to us, in all good faith, that if we did not do it, we would precipitate a receivership, with all the attendant evils and expense, and so forth. That was in the middle part of May 1932, when traffic and earnings were going down like a shot. The holders agreed to that extension, and accepted $500 principal payment in cash and extended the other $500, par amount, of their $1,000 bond, until 1990. That was with the understanding that the Southern Pacific, which controlled the Cotton Belt, would guarantee an R. F. C. loan of some $17,000,000. That was before the Bankruptcy Act of 1933. After that extension went through, in 1935, when traffic and earnings were on the ascendancy and when the Cotton Belt was earning almost 90 percent of its interest charges, it applied for the protection of the courts, claiming that it could not meet an R. F. C. loan which the Southern Pacific had gotten from the R. F. C. So the Southern Pacific is in a better position that the bondholder who



played along with the road and took the extension. That is an example where section 77 did not serve its purpose, and I am fearful that legislation such as this will inspire additional performances of that character.

The CHAIRMAN. Of course this is emergency legislation passed for a specific purpose. That is the reason why I said that, to meet an immediate emergency situation which we all know does exist with reference to one or two railroads, I have no objection to passing it—to meet this emergency. However, to throw it open, without further consideration as to the possibility of the things that might happen with reference to a lot of other railroads situated differently from the Baltimore & Ohio, is quite another matter; and I certainly would not favor it at this particular time, because I think we have not given it sufficient consideration as to what might occur in these other instances; it seems to me that before we make the application of this bill general we should have such further studies.

Mr. BROOKS. I would not want anything I have said before this committee to jeopardize the position of the Baltimore & Ohio and the efforts they have made to put through this plan; because I think that all their bondholders and all their creditors are in favor of it. They have been very fair with the creditors. The plan was proposed to the creditors some 5 months before there was any question of alteration.

The CHAIRMAN. Of course you know more about it than I do; but is it not true that the bondholders perhaps have more confidence in the management of the Baltimore & Ohio than they have in some of the companies that are controlled by other roads or that are controlled by certain interests?

Mr. BROOKS. Senator, I am going back to Wall Street, and I deal in all railroad bonds. I would prefer not to answer that question.

The CHAIRMAN. All right.

## STATEMENT OF J. D. SHATFORD, CHAIRMAN, RAILROAD OWNERS ASSOCIATION, WASHINGTON, D. C.

Mr. SHATFORD. Mr. Chairman, except to say that in view of the fact that the Judiciary Committee of the House of Representatives approved 75 percent as the necessary percentage of consents to make a proposed plan effective and that the House of Representatives approved it and while we think 66⅔ percent should be the maximum, we speak in approval of the bill as it now stands. I wish to offer my statement in the House as our statement before this committee.

(The statement referred to follows:)

Mr. SHATFORD. Mr. Chairman and members of the committee, I appear on behalf of an association of stockholders and bondholders of railroads, organized in 1924 and in the same year incorporated in the District of Columbia under an Act of Congress of March 5, 1925. We represent about 2 billions, or one-tenth of the entire issue of railroad stocks and bonds of the railroads. I am here to approve of your bill, with certain modifications and suggestions.

As it now stands it requires 75 percent in amount to make it effective. Our suggestion is that that be reduced to two-thirds. I will give you an example. One very large railroad has many millions of bonds issued in all forms of currencies, and they are distributed all over the world. It would be impossible almost for that railroad to receive a sufficient amount of agreements to limit it to 25 percent–75 percent. Therefore, we are suggesting that the 75 percent be reduced to

66⅔ percent. That will be bringing it up to date with the mortgages that are now issued under all new forms. I am going to submit to you a mortgage of the Virginian Railroad which calls for two-thirds for any change in the indenture.

Also, I will submit to you a mortgage of the New York & Queens Electric Light & Power Co., a utility company, whereby two-thirds are only necessary to change the indenture in the same manner and form as you propose to do with the railroads. These are the two important suggestions. However, there is another thing. During the Civil War the Chicago & Northwestern Railway found it necessary to make some agreement with the security holders. It proposed this plan. We will assume that 5 years was all that was necessary for it to get through its difficulties. It then made this agreement. Coupons were cut from the bonds for 5 years and a bond issue for those coupons of 15 years. Also, the privilege to extend any nearby maturization according to the agreement of those two-thirds of the amount of those in interest. That is a very simple method of procedure. You just simply cut the coupons and issue a bond for the coupons, and that bond bears an agreed interest of 5 percent or 4 percent or whatever may be agreed upon. And the principal, of course, is given to retire these bonds at any time. And also, amortization was agreed of something like 2 percent. That makes it very simple indeed for the carrying out of the subject matter. But the two-thirds, I think, is essential, Mr. Chairman, and members of the committee.

The CHAIRMAN. Thank you.

Mr. MICHENER. You are interested in this primarily then because it reduces the number of those consenting from 75 percent to 66⅔?

Mr. SHATFORD. That is true.

Mr. MICHENER. That is, 66⅔ percent?

Mr. SHATFORD. It would be very difficult to get 75 percent in a company like the one I refer to because of their securities being held world-wide. It would be very, very difficult, while two-thirds would be readily obtained.

The CHAIRMAN. In that connection, the chairman of the Judiciary Committee handed me a letter which I have either in my own office or here somewhere, from Jesse Jones, Chairman of the Reconstruction Finance Corporation. I want to put that letter in the record. He rather corroborates your view that the percentage required is probably too high.

Mr. SHATFORD. I have, in the last 10 days, I have been over in New York meeting with my committee, in a discussion of the procedure we should take in these matters. I have discussed it with at least a dozen men of finance and they have all agreed that two-thirds should be the maximum that should be required.

The CHAIRMAN. I want to place in the record a letter of Mr. Jesse H. Jones, Chairman of the Reconstruction Finance Corporation to Chairman Sumners, in which he says:

"It is possible that I will not be in the city when hearings are held on H. R. 3704.

"Should you or your committee care to have my views on it, I am pleased to say that I think the bill will be helpful to some roads which are having difficulty earning their fixed charges.

"It seems to me that where as many as two-thirds of all security holders and a majority of every class agree upon a modification and rearrangement of the capital structure of a railroad, there should be a legal way of making it effective.

"The only objection I see to the Chandler bill is that it provides for substantially larger percentages than these.

"Very sincerely yours,

"(Signed) JESSE H. JONES, *Chairman.*

"Dated: February 24, 1939."

Mr. SHATFORD. In support of our testimony that two-thirds should be the maximum percentage necessary for permissive reorganizations and in view of the experience of the holders of Nickel Plate 6 percent bonds 3 years ago, and also recently when those who refused to deposit their bonds received from 90 to 104 for them, we quote from a circular letter of a so-called advisory service published in Boston under date February 6, 1939, in which they speak of the Baltimore & Ohio 4½ percent bonds of 1939.

"We are not recommending the certificate of deposit, but strictly the undeposited bonds. This is a situation quite similar to the Nickel Plate 6 percent notes of October 1, 1938, where in June 1938, we recommended purchase and thereafter advised not to exchange for the new 3-year notes. The result was that clients who purchased between 47 and 50 in June, sold out in October at 90 or better."

Again in the same letter:

"We are recommending purchase of Baltimore & Ohio Railroad secured 4½ percent notes of August 1, 1939, not for deposit in favor of the maturity extension and interest modification plan, but for holding 6 to 9 months in the expectation of being able to sell them at prices substantially above existing market levels. The secured notes will be influenced during the next 6 months by the same threats of receivership as prevailed in the Nickel Plate situation. It is our belief, as in the case of Nickel Plate, that receivership will be avoided."



If such a large percentage as 75 percent would be necessary it can been seen that with the growing belief that undeposited bonds would be redeemed, it would have the effect of preventing a sufficient number of bonds deposited to carry out the proposed plan, because of dissenters hoping for a nuisance value for their holdings. That, I think, is all.

The CHAIRMAN. Thank you, Mr. Shatford.

Now, we have representatives from the Treasury Department who want to be heard. We would like to hear from them next.

Mr. SHATFORD. I just want to say, the Baltimore & Ohio has been cited here as a case where it was a very easy matter to get 85 percent. Mr. Willard is a very popular executive. It was through the force of his own personality and popularity that he received such support from the bondholders of his company.

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[Original letter and enclosures]

SABIN & PUNER

ATTORNEYS

292 Madison Avenue

NEW YORK, *May 15, 1939.*

Re: *Henry Abrams* v. *The Lehigh Valley Railroad Co.*

Sen. BURTON K. WHEELER,
*The Senate, Washington, D. C.*

DEAR SENATOR WHEELER: In view of your position with respect to the Chandler Act recently announced in the newspapers to the effect that you were in favor of its passage but felt that its operation should be limited in time so as to apply to the two railroads mostly in need of such legislation, the Lehigh Valley Railroad Co. and the Baltimore & Ohio Railroad, I am enclosing herewith a duplicate original of a petition which we have this day forwarded to the Interstate Commerce Commission and the Securities and Exchange Commission for appropriate action.

May I request that this petition be incorporated in the record of the hearings on the Chandler bill, and our opposition to the said bill because of the facts therein contained, duly noted.

Respectfully yours,

SAMUEL PAUL PUNER.

Interstate Commerce Commission. In the matter of the complaint of *Henry Abrams* v. *Lehigh Valley Railroad Co.*

*To the honorable Members of the Interstate Commerce Commission:*

The petition of Henry Abrams, respectfully shows to this Commission and alleges:

1. The Lehigh Valley Railroad Company is a railroad corporation organized and existing under and by virtue of the laws of the State of Pennsylvania.

2. That the Pennsylvania and New York Canal and Railroad Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania.

3. That the Pennsylvania and New York Canal and Railroad Company is a wholly owned subsidiary corporation of the Lehigh Valley Railroad Company.

4. That on or about the 13th day of November 1888 the Pennsylvania and New York Canal and Railroad Company made a series of 10,000 bonds of $1,000.00 each numbered from 1 to 10,000, both inclusive, all of like date, tenure, and effect. and entitled to the security to be derived from a mortgage of the said Pennsylvania and New York Canal and Railroad Company to the Girard Life Insurance Annuity and Trust Company of Philadelphia, bearing even date therewith, whereby the said Pennsylvania and New York Canal and Railroad Company promised to pay to the registered owner of each of the said bonds, or to the legal representative of such registered owner, at its office in the City of Philadelphia, State of Pennsylvania, the principal sum of $1,000.00 on the 1st day of April 1939.

5. On or about the 19th day of February, 1889, defendant Lehigh Valley Railroad Company, by its officers, duly authorized by its board of directors, under its corporate seal, and for a valuable consideration, duly endorsed and executed upon said bonds, the following agreement of guaranty, viz:

"For a valuable consideration, The Lehigh Valley Railroad Company hereby guarantees to the holders of the within bonds, the punctual payment of the principal and interest thereon when and as the same becomes due and payable.

"In witness whereof the said company has caused to be hereunto affixed its corpocrate seal, duly attested at Philadelphia this nineteenth day of February, A. D. 1889.

"(signed) JOHN B. GARRETT,
"*Third Vice President.*

"Attested

"(Signed) JNO. R. FANSHAWE, *Secretary.*

6. That thereafter the Pennsylvania and New York Canal and Railroad Company, for a valuable consideration and for value received, issued and delivered the said bonds to the purchasers thereof.

7. That for a period of some fifty years the said bonds have been sold in the open market and have been legal investments in the State of Pennsylvania and in other states and have generally been considered high grade investments.

8. That the said bonds have enjoyed so high a reputation principally because of the said unconditional guaranty of the Lehigh Valley Railroad Company hereinbefore set forth.

9. Heretofore your petitioner purchased in the open market five of the said bonds of the Pennsylvania and New York Canal and Railroad Company.

10. Your petitioner purchased these five said bonds as an investment relying upon and induced by the said guaranty of the Lehigh Valley Railroad Company endorsed thereon as aforesaid.

11. That on or about the 25th day of August 1938 the Lehigh Valley Railroad Company submitted to the holders of its securities a plan for the extension of interest and principal maturities of certain of its outstanding obligations.

12. That prior to the submission of said Plan the said Plan was submitted to the Interstate Commerce Commission and the said Commission relying upon the statements in said Plan gave its necessary consent to the submission of the said Plan to the said security holders.

13. That among the principal maturities affected by the Plan were the said bonds of the Pennsylvania and New York Canal and Railroad Company due April 1st, 1939 offered to the public, guaranteed by the said Lehigh Valley Railroad Company, and five of which were purchased by your petitioner, all as hereinabove set forth.

14. By the terms of the said Plan, the Lehigh Valley Railroad Company requested the owners of the said bonds to voluntarily agree to the extension of the principal maturities until the 1st day of April 1949, without impairment of lien and without impairment of the Lehigh Valley Railroad Company's said guaranty thereof.

15. That the said Plan contained, among others, the following statements with respect to the guaranty of the bonds in question:

(a) Page 5: "(a) The maturity of the principal of the Canal Bonds, the Rail Way Bonds, and the Terminal Bonds becoming subject to the Plan shall be extended, without impairment of lien and without impairment of the Company's guaranty thereof, for a period of ten years; that is, the Canal Bonds to April 1, 1949, the Rail Way Bonds to July 1, 1950, and the Terminal Bonds to October 1, 1951."

(b) Page 5: "(b) The extended bonds will continue to bear interest during the period of extension at the rates now borne by them respectively, payable semiannually, and the Company's present guaranty of interest will be extended to such interest during the period of the extension."

(c) Page 9: "Leased Lines Debt (First Mortgage Bonds Guaranteed, principal and interest, by L. V. R. R. Co.): Penna. & N. Y. Canal & R. R. Co. Consolidated (now First) Mortgage Bonds * * *."

(d) Page 11: "Leased Lines' Mortgage Debt—Guaranteed Principal and Interest By Lehigh Valley Railroad Company—

"Pennsylvania and New York Canal and Railroad Company Consolidated Mortgage Bonds, due April 1, 1939 ($8,500,000, principal amount, outstanding in hands of public):

"Secured by a first lien on the entire railroad of Pennsylvania and New York Canal and Railroad Company extending from Wilkes-Barre, Pennsylvania, to the boundary line between the States of Pennsylvania and New York, 96.56 miles; and branches, 26.68 miles.

"Upon a completed event of default, the holders of 20% in amount of outstanding bonds can compel the trustee to enter into possession and sell the mortgaged properties. Entry upon or sale of the mortgaged properties automatically prematures the principal of the bonds."



16. Upon information and belief the said statements made in the said Plan were submitted under oath to the Interstate Commerce Commission for its approval.

17. Upon information and belief the said Plan was approved by the Interstate Commerce Commission on or about the 14th day of March 1939, and the said Plan has been declared operative.

18. Upon information and belief the approval of the Interstate Commerce Commission was granted as aforesaid upon the condition that the statements contained in the said Plan were true and that no fraud would thereby be perpetrated upon the said security holders affected.

19. That consents to that portion of the Plan which extended the maturities of the Pennsylvania and New York Canal and Railroad Company bonds as aforesaid were obtained from almost 90% of the bondholders, all of whom relied upon the truth and accuracy of the statements made under oath as aforesaid and contained in the said Plan.

20. That your petitioner's consent to the Plan was solicited by the Lehigh Valley Railroad Company and after due consideration your petitioner failed and refused to give his consent.

21. That on the 1st day of April 1939, the maturity date of the said bonds, your petitioner caused the five bonds owned by him as aforesaid to be presented for payment at the offices of the Pennsylvania and New York Canal and Railroad Company, where by the terms of said bonds the said principal sum is payable.

22. That on the said date at the said offices payment was refused by the said Pennsylvania and New York Canal and Railroad Company.

23. That the Lehigh Valley Railroad Company, whose guaranty was endorsed on the said bonds as aforesaid, on the said maturity date also failed and refused to pay the said principal sum pursuant to the terms of the said bonds and the guaranty endorsed thereon.

24. That upon the aforesaid refusals of payment your petitioner commenced actions in the Municipal Court of the City of New York against the Lehigh Valley Railroad Company seeking to recover the sum of $1,000 on each of the said bonds pursuant to the terms of the guaranty endorsed thereon. A copy of the summons and verified complaint in said actions is hereto annexed and made part hereof as Exhibit A.

25. That thereafter the attorneys for the Lehigh Valley Railroad Company delayed the services of an answer on the merits of the litigation by dilatory motions to dismiss your petitioner's complaints, all of which motions were subsequently denied.

26. That on or about the 2nd day of May 1939, the Lehigh Valley Railroad Company answered the said complaints under oath. A copy of the said answer identical in each of the actions is annexed hereto and made part hereof as Exhibit B.

27. That the said answer, as more fully appears from an examination thereof, contains seven defenses.

28. Your petitioner has been informed and verily believes that each of the said defenses are sham, frivolous, insufficient in law, and interposed solely for the purpose of delaying the determination of your petitioner's actions.

29. One of the defenses set forth in said complaint, to wit, "Fifth," alleges in substance, as more fully appears from Exhibit B hereto annexed, that the said Lehigh Valley Railroad Company offered the Plan hereinbefore described to the holders of its securities, and upon the consent to said Plan of a sufficient number of security holders the Plan was to become operative; that the registered owners of 88.9% have consented to the said Plan; that said Plan has been declared operative; that by said Plan it is provided that said Lehigh Valley Railroad Company may not make any payment to the holders of securities who have not consented to said Plan, unless a like payment be made on bonds which have been subjected to the Plan by consent thereto; that any such payment may result in compelling Lehigh Valley Railroad Company to invoke the provisions of the Bankruptcy Law.

30. One of the defenses set forth in said complaint, to wit, that designated "Seventh," alleges in substance, as more fully appears in Exhibit B hereto annexed, that said Lehigh Valley Railroad Company theretofore notified petitioner to commence action on said bonds against the principal debtor, to wit, Pennsylvania and New York Canal and Railroad Company, and notified petitioner

INTENTIONAL SECOND EXPOSURE



5. On or about the 19th day of February, 1889, defendant Lehigh Valley Railroad Company, by its officers, duly authorized by its board of directors, under its corporate seal, and for a valuable consideration, duly endorsed and executed upon said bonds, the following agreement of guaranty, viz:

"For a valuable consideration, The Lehigh Valley Railroad Company hereby guarantees to the holders of the within bonds, the punctual payment of the principal and interest thereon when and as the same becomes due and payable.

"In witness whereof the said company has caused to be hereunto affixed its corporate seal, duly attested at Philadelphia this nineteenth day of February, A. D. 1889.

"(signed) JOHN B. GARRETT,
*"Third Vice President.*

"Attested

"(Signed) JNO. R. FANSHAWE, *Secretary.*

6. That thereafter the Pennsylvania and New York Canal and Railroad Company, for a valuable consideration and for value received, issued and delivered the said bonds to the purchasers thereof.

7. That for a period of some fifty years the said bonds have been sold in the open market and have been legal investments in the State of Pennsylvania and in other states and have generally been considered high grade investments.

8. That the said bonds have enjoyed so high a reputation principally because of the said unconditional guaranty of the Lehigh Valley Railroad Company hereinbefore set forth.

9. Heretofore your petitioner purchased in the open market five of the said bonds of the Pennsylvania and New York Canal and Railroad Company.

10. Your petitioner purchased these five said bonds as an investment relying upon and induced by the said guaranty of the Lehigh Valley Railroad Company endorsed thereon as aforesaid.

11. That on or about the 25th day of August 1938 the Lehigh Valley Railroad Company submitted to the holders of its securities a plan for the extension of interest and principal maturities of certain of its outstanding obligations.

12. That prior to the submission of said Plan the said Plan was submitted to the Interstate Commerce Commission and the said Commission relying upon the statements in said Plan gave its necessary consent to the submission of the said Plan to the said security holders.

13. That among the principal maturities affected by the Plan were the said bonds of the Pennsylvania and New York Canal and Railroad Company due April 1st, 1939 offered to the public, guaranteed by the said Lehigh Valley Railroad Company, and five of which were purchased by your petitioner, all as hereinabove set forth.

14. By the terms of the said Plan, the Lehigh Valley Railroad Company requested the owners of the said bonds to voluntarily agree to the extension of the principal maturities until the 1st day of April 1949, without impairment of lien and without impairment of the Lehigh Valley Railroad Company's said guaranty thereof.

15. That the said Plan contained, among others, the following statements with respect to the guaranty of the bonds in question:

(a) Page 5: "(a) The maturity of the principal of the Canal Bonds, the Rail Way Bonds, and the Terminal Bonds becoming subject to the Plan shall be extended, without impairment of lien and without impairment of the Company's guaranty thereof, for a period of ten years; that is, the Canal Bonds to April 1, 1949, the Rail Way Bonds to July 1, 1950, and the Terminal Bonds to October 1, 1951."

(b) Page 5: "(b) The extended bonds will continue to bear interest during the period of extension at the rates now borne by them respectively, payable semiannually, and the Company's present guaranty of interest will be extended to such interest during the period of the extension."

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"Upon a completed event of default, the holders of 20% in amount of outstanding bonds can compel the trustee to enter into possession and sell the mortgaged properties. Entry upon or sale of the mortgaged properties automatically prematures the principal of the bonds."



16. Upon information and belief the said statements made in the said Plan were submitted under oath to the Interstate Commerce Commission for its approval.

17. Upon information and belief the said Plan was approved by the Interstate Commerce Commission on or about the 14th day of March 1939, and the said Plan has been declared operative.

18. Upon information and belief the approval of the Interstate Commerce Commission was granted as aforesaid upon the condition that the statements contained in the said Plan were true and that no fraud would thereby be perpetrated upon the said security holders affected.

19. That consents to that portion of the Plan which extended the maturities of the Pennsylvania and New York Canal and Railroad Company bonds as aforesaid were obtained from almost 90% of the bondholders, all of whom relied upon the truth and accuracy of the statements made under oath as aforesaid and contained in the said Plan.

20. That your petitioner's consent to the Plan was solicited by the Lehigh Valley Railroad Company and after due consideration your petitioner failed and refused to give his consent.

21. That on the 1st day of April 1939, the maturity date of the said bonds, your petitioner caused the five bonds owned by him as aforesaid to be presented for payment at the offices of the Pennsylvania and New York Canal and Railroad Company, where by the terms of said bonds the said principal sum is payable.

22. That on the said date at the said offices payment was refused by the said Pennsylvania and New York Canal and Railroad Company.

23. That the Lehigh Valley Railroad Company, whose guaranty was endorsed on the said bonds as aforesaid, on the said maturity date also failed and refused to pay the said principal sum pursuant to the terms of the said bonds and the guaranty endorsed thereon.

24. That upon the aforesaid refusals of payment your petitioner commenced actions in the Municipal Court of the City of New York against the Lehigh Valley Railroad Company seeking to recover the sum of $1,000 on each of the said bonds pursuant to the terms of the guaranty endorsed thereon. A copy of the summons and verified complaint in said actions is hereto annexed and made part hereof as Exhibit A.

25. That thereafter the attorneys for the Lehigh Valley Railroad Company delayed the services of an answer on the merits of the litigation by dilatory motions to dismiss your petitioner's complaints, all of which motions were subsequently denied.

26. That on or about the 2nd day of May 1939, the Lehigh Valley Railroad Company answered the said complaints under oath. A copy of the said answer identical in each of the actions is annexed hereto and made part hereof as Exhibit B.

27. That the said answer, as more fully appears from an examination thereof, contains seven defenses.

28. Your petitioner has been informed and verily believes that each of the said defenses are sham, frivolous, insufficient in law, and interposed solely for the purpose of delaying the determination of your petitioner's actions.

29. One of the defenses set forth in said complaint, to wit, "Fifth," alleges in substance, as more fully appears from Exhibit B hereto annexed, that the said Lehigh Valley Railroad Company offered the Plan hereinbefore described to the holders of its securities, and upon the consent to said Plan of a sufficient number of security holders the Plan was to become operative; that the registered owners of 88.9% have consented to the said Plan; that said Plan has been declared operative; that by said Plan it is provided that said Lehigh Valley Railroad Company may not make any payment to the holders of securities who have not consented to said Plan, unless a like payment be made on bonds which have been subjected to the Plan by consent thereto; that any such payment may result in compelling Lehigh Valley Railroad Company to invoke the provisions of the Bankruptcy Law.

30. One of the defenses set forth in said complaint, to wit, that designated "Seventh," alleges in substance, as more fully appears in Exhibit B hereto annexed, that said Lehigh Valley Railroad Company theretofore notified petitioner to commence action on said bonds against the principal debtor, to wit, Pennsylvania and New York Canal and Railroad Company, and notified petitioner

that unless he took such action said Lehigh Valley Railroad Company would consider itself wholly released and discharged from any obligation or liability upon the guaranty endorsed upon said bonds as aforesaid, that it is the law of Pennsylvania that Lehigh Valley Railroad Company's liability upon said bonds and guaranty is conditioned upon petitioner's taking such action pursuant to Lehigh Valley Railroad Company's said demand; and that Lehigh Valley Railroad Company is released from its guaranty and any liability upon said bonds, by petitioner's failure to act in accordance with the said demand.

31. The said defenses and each of them are inconsistent with and contradictory to the said guaranty endorsed as aforesaid upon your petitioner's bond.

32. The said defense designated "Seventh" is further inconsistent with and contradictory to the unqualified and unconditional statements set forth in the said Plan concerning the guaranty as aforesaid and as alleged in paragraph 15 hereof.

33. Lehigh Valley Railroad Company has perpetrated a fraud upon your petitioner in that defense designated "Seventy" as set forth in substance in paragraph 30 hereof is contradictory to the guaranty endorsed by the said Lehigh Valley Railroad Company upon the said bonds, which guaranty purports to be unconditional and in reliance upon which guaranty your petitioner purchased said bonds in the open market as aforesaid.

34. Lehigh Valley Railroad Company has perpetrated a fraud upon the security buying public, more particularly upon the purchasers of the said bonds, in that the guaranty endorsed by said Lehigh Valley Railroad Company upon said bonds, which guaranty purports to be unconditional, has for upwards of 50 years induced and caused the said purchasers and public to buy the said bonds whereas Lehigh Valley Railroad Company, if the said defense designated "Seventh" be, in fact, true, has never unconditionally guaranteed the said bonds and has always known and intended that its guaranty should not be unconditional.

35. Lehigh Valley Railroad Company has perpetrated a fraud upon the Interstate Commerce Commission in that the defense set forth in the said Lehigh Valley Railroad Company's answer designated "Fifth" set forth in subtance in paragraph 29 hereof is contradictory to the said guaranty and is contradictory to the statements set forth in the said Plan as hereinbefore in paragraph 15 alleged, and in reliance upon which false and untrue guaranty and statements, knowingly made by the said Lehigh Valley Railroad Company, the said Interstate Commerce Commission was induced to and gave its consent to the said Plan and permitted the same to be offered to the said security holders for their consent.

36. Lehigh Valley Railroad Company has perpetrated a fraud upon all of the holders of its securities who have consented to the said Plan in that, if the said defense designated "Fifth" be true, then the statements of unconditional guaranty set forth in the said Plan and the guaranty endorsed upon the said bonds are false, and in reliance upon which said statements and guaranty the said consenting security holders gave their consents.

37. Lehigh Valley Railroad Company has perpetrated a fraud upon your petitioner and upon those security holders who have not consented to the said Plan in that the defense designated "Fifth", which in effect sets forth the operation of the said Plan, thus fraudulently conceived, fostered, and offered to the said security holders, has been asserted as a defense to bar recovery upon the said bonds and upon the said guaranty endorsed thereon, in actions instituted by this petitioner and by other security holders who have not consented.

38. Your petitioner has suffered damage by reason of the said fraudulent guaranty of the said Lehigh Valley Railroad Company in that having purchased the said bonds in reliance upon the said guaranty, which purports to be unconditional his recovery thereon has been and is resisted by the said Lehigh Valley Railroad Company, which seeks to assert in its defense designated "Seventh" that the said guaranty despite the terms thereof is not unconditional.

39. Your petitioner has suffered damage by reason of said fraudulent Plan in that his recovery upon the said bonds and the guaranty endorsed thereon is endangered, hindered, and resisted by the interposition of the said Plan as a defense to his actions commenced in the Municipal Court as aforesaid in paragraph 24 hereof.

Wherefore your petitioner prays for an order of this Commission modifying its order authorizing the issuance or modification by the Lehigh Valley Railroad Company of its securities pursuant to the said Plan approved by this Commission on or about the 14th day of March 1938 and making such approval subject to and conditioned upon the prior payment by the said Lehigh Valley Railroad Company of its obligations upon the said bonds of the Pennsylvania and New York Canal and Railroad Company due April 1st 1939 and its guaranty thereof,



to your petitioner and to all other holders of said bonds who have not consented to the said Plan, or in the alternative withdrawing and revoking its approval of the said issuance or modification of the said securities pursuant to the said Plan and vacating its order of approval heretofore made as aforesaid.

Dated New York, May 15th 1939.

HENRY ABRAMS, *Petitioner.*

STATE OF NEW YORK,
*City of New York, County of New York, ss:*

Henry Abrams, being duly sworn, deposes and says: That I am the petitioner herein; that I have read the foregoing petition and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe it to be true.

HENRY ABRAMS.

Sworn to before me this 15th day of May 1939.

GEORGE D. ARANOW,
*Notary Public, Nassau Co. No. 26,*
*N. Y. Co. Clk's. No. 21 Reg. No. 1A14.*

Term expires March 30, 1941.

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EXHIBIT A

Municipal Court of the City of New York, Borough of Manhattan, Ninth District.
Henry Abrams, plaintiff, Against Lehigh Valley Railroad Company, defendant

COMPLAINT

Plaintiff, complaining of defendant, by Sabin & Puner, his attorneys, respectfully alleges:

First. Upon information and belief that the defendant is, and at all times hereinafter mentioned was a foreign corporation, duly organized and existing under and pursuant to the laws of the State of Pennsylvania, and at all times hereinafter mentioned was and now is duly authorized to and does transact business within the State of New York.

Second. Upon information and belief that the Pennsylvania and New York Canal and Railroad Company is a foreign corporation duly organized and existing under and pursuant to the laws of the State of Pennsylvania.

Third. On or about the 13th day of November 1888 the said Pennsylvania and New York Canal and Railroad Company made a series of 10,000 bonds of $1,000.00 each, numbered from 1 to 10,000, both inclusive, all of like date, tenure and effect, and entitled to the security to be derived from a mortgage of the said Pennsylvania and New York Canal and Railroad Company to the Girard Life Insurance Annuity and Trust Company of Philadelphia, bearing even date therewith, whereby the said Pennsylvania and New York Canal and Railroad Company promised to pay to the registered owner of each of the said bonds, or to the legal representative of such registered owner, at its office in the City of Philadelphia, State of Pennsylvania, the principal sum of $1,000.00 on the 1st day of April 1939.

Fourth. On or about the 19th day of February 1889, defendant Lehigh Valley Railroad Company, by its officers, duly authorized by its board of directors, under its corporate seal, and for a valuable consideration, duly indorsed and execution upon said bonds, the following agreement of guaranty, viz:

> For a valuable consideration, The Lehigh Valley Railroad Company hereby guarantees to the holders of the within bond, the punctual payment of the principal and interest thereon when and as the same becomes due and payable.
>
> IN WITNESS WHEREOF, the said company has caused to be hereunto affixed its corporate seal, duly attested this nineteenth day of February A. D. 1889.
>
> (Signed) JOHN B. GARRETT,
> *Third Vice President.*
>
> Attested
> (Signed) JNO R. FANSHAWE,
> *Secretary.*

Fifth. That thereafter the Pennsylvania and New York Canal and Railroad Company, for a valuable consideration and for value received issued and delivered the said bonds to the purchasers thereof.

Sixth. Plaintiff, by mesne assignments, is the rightful owner and holder of one of said bonds bearing the No. ———, and having endorsed thereon the agreement of guaranty set forth in paragraph "Fourth" hereof.

Seventh. On the 1st day of April 1939 the registered owner duly presented the said bond at the offices of said Pennsylvania and New York Canal and Railroad Company in the City of Philadelphia, Pennsylvania, and there and then demanded of said Pennsylvania and New York Canal and Railroad Company payment of the principal sum due on said bond.

Eighth. Upon said demand hereinbefore in paragraph "Seventh" alleged, said Pennsylvania and New York Canal and Railroad Company failed and refused to pay the said principal sum of $1,000.00 in accordance with the terms of said bond.

Ninth. The said principal sum of $1,000.00 as provided in said bond remains unpaid, and the whole amount of said principal is due from defendant to the plaintiff under the terms of the guaranty set forth in paragraph "Fourth" hereof.

Wherefore plaintiff demands judgment against defendant for the sum of $1,000.00 with interest thereon from the 1st day of April 1939, together with the costs and disbursements of this action.

SABIN & PUNER,
*Attorneys for Plaintiff.*

Verified by Henry Abrams April 1st, 1939.

[SEAL] SAMUEL SACHER, *Notary Public.*

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EXHIBIT B

Municipal court of the City of New York, Borough of Manhattan, Ninth District.

Henry Abrams, plaintiff, against Lehigh Valley Railroad Company, defendant.

Defendant's address, 425 Brighton Street, Bethlehem, Pa.

The defendant, answering the complaint herein, avers and alleges:

1. Upon information and belief, defendant denies each and every allegation contained in the paragraph or subdivision of the complaint designated "Third," except that the defendant admits that on or about the 13th day of November 1888, the Pennsylvania and New York Canal and Railroad Company was duly authorized to execute and issue 10,000 bonds of said company to the aggregate amount of $10,000,000.00, each of the par value of $1,000 to be numbered from 1 to 10,000, inclusive, payable April 1st, 1939, subsequently extended to April 1, 1949, with interest from the first day of April 1889, at the rate of five percent (5%) per annum, four percent (4%) and four and one-half percent (4½%) per annum, and for securing payment of said bonds with interest to execute a mortgage of and upon real estate, railroad and franchises of said company and its branches, and that on said day the said Pennsylvania and New York Canal and Railroad Company and the Girard Life Insurance Annuity and Trust Company in Philadelphia, Pennsylvania, entered into a certain mortgage agreement dated said day, for the true terms and conditions of which the defendant begs leave to refer to the original or a duly authenticated copy on the trial of this action, and that thereafter said Pennsylvania and New York Canal and Railroad Company made and executed under and pursuant to the terms of said mortgage a series of 10,000 bonds of $1,000 each, numbered 1 to 10,000, both inclusive, all of like date, tenor, and effect and entitled to equal security to be derived from the said mortgage, and that in and by each of said bonds the said Pennsylvania and New York Canal and Railroad Company promised, if, as, and when said bond should be duly issued, to pay to the registered owner thereof or to the legal representative of such registered owner at its office in the City of Philadelphia, in the State of Pennsylvania, the sum of $1,000, subject to the terms and conditions contained in said bond and mortgage and not otherwise.

2. Upon information and belief, the defendant denies each and every allegation contained in the paragraph or subdivision of the complaint designated "Fifth," except that the defendant admits that for a valuable consideration and for value received the Pennsylvania and New York Canal and Railroad Company from time to time issued and delivered certain of the said bonds to the purchasers thereof.

3. Answering the allegations contained in the paragraph or subdivision of the complaint designated "Sixth", and each of them, the defendant denies that it has any knowledge or information thereof sufficient to form a belief.

4. Upon information and belief, the defendant denies each and every allegation contained in the paragraphs or subdivisions of the complaint designated respectively "Seventh" and "Eighth."



5. Upon information and belief, the defendant denies each and every allegation contained in the paragraph or subdivision of the complaint designated "Ninth", except that the defendant admits that the sum of $1,000 specified in the bond referred to in the complaint remains unpaid.

Second: For a separate and distinct defense to the alleged cause of action set forth in the complaint herein, the defendant further avers and alleges, upon information and belief:

6. That the complain herein does not state facts sufficient to constitute a cause of action.

Third: For a further separate and distinct defense to the alleged cause of action set forth in the complaint herein, the defendant further avers and alleges, upon information and belief:

7. That this action was commenced before the time for the payment of the bond referred to in the complaint expired and before any cause of action upon the defendant's guarantee of payment thereof accrued.

Fourth: For a further separate and distinct defense to the alleged cause of action set forth in the complaint herein, the defendant further avers and alleges, upon information and belief:

8. That the plaintiff at the time of the commencement of this action was not the registered owner of the bond referred to in the complaint nor the legal representative of such registered owner.

Fifth: For a further separate and distinct defense to the alleged cause of action set forth in the complaint herein, the defendant further avers and alleges, upon information and belief:

9. That the defendant is and for upwards of 86 years last past has been a common carrier by railroad engaged in interstate and intrastate commerce in the States of New York, and New Jersey, and in the Commonwealth of Pennsylvania, operating a system of railroad consisting of 1,288.27 miles of main-line track in said States extending from the City of New York in the State of New York; Jersey City, State of New Jersey; through the cities of Wilkes-Barre and Sayre in the Commonwealth of Pennsylvania to East Waverly, in the State of New York; and to Rochester and Buffalo and intervening points in said State.

10. That the public service performed by the defendant in furnishing transportation for persons and freight in the said territory through which the defendant operates its system of railroad is indispensable to the people and communities within said territory.

11. That on or about August 25, 1938, there was outstanding in the hands of the public approximately $142,627,000 principal amount of funded debt of the defendant and its subsidiaries and defendant had certain other financial obligations involving fixed charges which the defendant, in view of the deficits which the defendant had suffered during recent years and the current decline in revenues due to the current depressed economic conditions of the country at large and of the territory served by the defendant, would probably be unable to meet in full during the next few years and at the same time properly maintain its properties and make those additions and betterments which might be necessary for efficient operation, and for proper performance of its duties to the public as a carrier of passengers and freight.

12. That heretofore and under date of August 25, 1938, the defendant and said Pennsylvania and New York Canal and Railroad Company proposed to the owners of certain bonds and obligations of defendant and to the registered owners of the bonds of the Pennsylvania and New York Canal and Railroad Company a certain plan and agreement for the extension for ten years of the principal of the bonds referred to in the complaint and for the extension of certain other securities and obligations of the defendant in accordance with the terms and conditions of said plan and agreement.

13. That in and by said plan and agreement it was provided that the holders of bonds affected thereby might assent thereto and become parties to said agreement by presenting their bonds to the defendant for stamping thereon of an appropriate notation and that the defendant with the approval of a certain committee composed of representatives of owners of defendant's bonds and owners of bonds of the Pennsylvania and New York Canal and Railroad Company as provided for therein, might determine whether and when the owners of a sufficient amount of the obligations affected by the said plan shall have become subject thereto to make it feasible to carry out said plan, and that the said plan should become operative when so declared by the defendant with the approval of said committee, and that after said plan was declared operative no assent thereto could

be revoked or withdrawn except upon the compliance with certain terms and conditions specified in said plan and agreement.

14. That the registered owners of eighty-eight and nine-tenths (88.9%) percent of the principal amount of the bonds referred to in the complaint, and that the defendant under and pursuant to and in accordance with the terms and conditions of said plan and agreement with the approval of the said Committee declared said plan to be operative on the 14th day of March, 1939, and that the bonds which were submitted for that purpose were duly stamped with a notation that the time for the payment of the principal amount thereof had been extended to April 1, 1949, and that any attempt which may thereafter have been made to revoke or annul the extension of the maturity of said bond from April 1, 1939 to April 1, 1949 was and is ineffectual, illegal, void and in contravention of the terms and conditions of said plan and agreement and the rights of the assenting registered owners of said 88.9% of the issue of bonds referred to in the complaint.

15. That in and by said plan and agreement it was and is provided that the defendant will not without the consent of the said committee make any payment with respect of any of the bonds referred to therein, including the bonds referred to in the complaint unless a like payment on bonds subject to the plan shall simultaneously be made, and that any such payment may result in the defendant's being forced to invoke the provisions of the Bankruptcy Law to the detriment of the plaintiff and all other security holders of the defendant unless with respect to the bonds referred to in the complaint there be enforced the extension thereof to April 1, 1949.

Seventh: For a further separate and distinct defense to the alleged cause of action set forth in the complaint herein, the defendant further avers and alleges, upon information and belief:

16. That the defendant heretofore notified the plaintiff in writing that the defendant requires and demands that plaintiff institute suit on the bond referred to in the complaint against the Pennsylvania and New York Canal and Railroad Company, which is the principal debtor and obligor thereon, and take all and any action at law or in equity which may be necessary and proper to enforce against said Pennsylvania and New York Canal and Railroad Company by due process of law collection of the debt and enforcement of the obligations covered and represented by said bond and that unless plaintiff sued and proceeded against said Pennsylvania and New York Canal and Railroad Company as the defendant required and demanded, the defendant would and does consider itself wholly released and discharged from any obligation or liability in the premises.

17. That the bond referred to in the complaint, the mortgage pursuant to which said bond was issued, and the defendant's endorsement on said bond were made, executed, and delivered on the Commonwealth of Pennsylvania and that said bond in and by its terms is payable in the Commonwealth of Pennsylvania, and that the rights, duties, and liabilities of the Pennsylvania and New York Canal and Railroad Company, the registered owner and legal representative of the registered owner of said bond and of any other owner, holder, transferee, or assignee thereof, and of the defendant are governed by and subject to the laws of the Commonwealth of Pennsylvania.

18. That at all of the times referred to in the complaint it was and still is the law of the Commonwealth of Pennsylvania that in the event the owner or person entitled to receive payment upon a bond or other instrument for the payment of money fails and refuses to institute suit upon such bond or other instrument against the principal debtor or obligor therein and to take all and any action at law or in equity which may be necessary or proper to enforce against such principal debtor or obligor by due process of law collection of the debt and enforcement of the obligation represented by such bond or other instrument after written demand by any guarantor of payment of such obligation that such owner or other person entitled to receive payment do so, that the surety or guarantor of payment of such obligation is released and discharged therefrom.

19. That the plaintiff has failed to institute suit on the bond referred to in the complaint against the Pennsylvania and New York Canal and Railroad Company or to take any action or proceeding at law or in equity to enforce against said Pennsylvania and New York Canal and Railroad Company collection of the debt and enforcement of the obligations covered and represented by said bond, and the defendant has been wholly released and discharged from any obligation or liability in the premises.

Eighth: For a further separate and distinct defense to the alleged cause of action set forth in the complaint herein, the defendant further avers and alleges, upon information and belief:



20. That the bond referred to in the complaint is one of the bonds of an authorized issue of 10,000 bonds of the Pennsylvania and New York Canal and Railroad Company to the aggregate amount of $10,000,000.00, each of the par value of $1,000.00, numbered 1 to 10,000 inclusive, all of like date, tenor, and effect, and secured by a mortgage of and upon real estate, and that said bonds represent a loan or indebtedness which originated and was originally contracted for simultaneously with said mortgage and is secured solely by said mortgage, to wit, a certain mortgage, dated November 13, 1888, made and executed by the Pennsylvania and New York Canal and Railroad Company to The Girard Life Insurance, Annuity and Trust Company, which said mortgage then was and still is a first lien upon the real estate therein described, and that the bond referred to in the complaint, together with all of the other said bonds which have been issued and are outstanding, is entitled to equal security to be derived from said mortgage, and that the total amount of said bonds which have been issued and are outstanding is $8,500,000.00.

21. That the fair and reasonable market value of the said mortgaged property, less the amounts owing on any prior liens or encumbrances, is in excess of the sum of $10,000,000.00.

22. That all taxes upon the said mortgaged premises and all interest on the said bonds have been duly paid.

Wherefore, the defendant demands judgment dismissing the complaint herein, with costs.

ALEXANDER & GREEN,
*Attorneys for Defendant.*

Office and post-office address: No. 120 Broadway, Borough of Manhattan, City of New York, N. Y.

STATE OF NEW YORK,
*County of New York, ss:*

R. W. Barrett, being duly sworn, deposes and says that he is an officer, to wit, Vice President of Lehigh Valley Railroad Company, the defendant named in the foregoing answer; that he has read the said answer and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That the reason why this verification is made by deponent is that defendant is a foreign corporation.

That the sources of deponent's information and the grounds of his belief as to all matters in said answer not stated of his own knowledge are the books, papers, and records of said defendant, besides his own knowledge as such officer.

Sworn to before me this 1st day of May 1939.

R. W. BARRETT.

[SEAL] KATHRYN B. THOMPSON,
*Notary Public, Queens County.*

Queens Co. Clk's No. 1915, Reg. No. 5883; N. Y. Co. Clk's No. 129, Reg. No. 1–T–109; Kings Co. Clk's No. 11, Reg. No. 1050. Commission Expires March 30, 1941.

Gentlemen, this will close this hearing.

(At 12:50 p. m. the hearing was concluded.)

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